



FACULTY OF CIVIL LAW (1734)

CRIMINAL LAW

**2018 GOLDEN NOTES
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UNIVERSITY OF SANTO TOMAS
MANILA**

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**For being our guideposts in understanding the intricate sphere of Criminal Law.
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*based on 2018Bar syllabus

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**BOOK I, REVISED PENAL CODE
AND SPECIFICALLY INCLUDED SPECIAL LAWS**

**FUNDAMENTAL AND GENERAL PRINCIPLES IN
CRIMINAL LAW**

DEFINITION OF CRIMINAL LAW

Criminal law is that branch of law, which defines crimes, treats of their nature, and provides for their punishment.

Theories in criminal law

1. **Classical theory** – The basis of criminal liability is human free will and the purpose of the penalty is retribution. It is endeavoured to establish a mechanical and direct proportion between crime and penalty, and there is scant regard to the human element.

NOTE: The RPC is generally governed by this theory.

2. **Positivist theory** – The basis of criminal liability is the sum of the social, natural and economic phenomena to which the actor is exposed. The purposes of penalty are prevention and correction. This theory is exemplified in the provisions regarding impossible crimes (RPC, Art. 4), the mitigating circumstances of voluntary surrender and plea of guilty (RPC, Art. 13, par 7), and habitual delinquency [RPC, Art. 62(5)].
3. **Eclectic or Mixed theory** – It is a combination of positivist and classical thinking wherein crimes that are economic and social in nature should be dealt in a positive manner, thus, the law is more compassionate. Ideally, the classical theory is applied to heinous crimes, whereas, the positivist is made to work on economic and social crimes.
4. **Utilitarian or Protective theory**– The primary purpose of punishment under criminal law is the protection of society from actual and potential wrongdoers. The courts, therefore, in exacting retribution for the wronged society, should direct the punishment to potential or actual wrongdoers since criminal law is directed against acts or omissions which the society does not approve. Consistent with this theory is the *mala*

prohibita principle which punishes an offense regardless of malice or criminal intent.

Equipoise Rule

Where the evidence in a criminal case is evenly balanced, the constitutional presumption of innocence tilts the scales in favor of the accused.

Under this rule, where the evidence on an issue of fact is in equipoise or there is doubt on which side the evidence preponderates, the party having the burden of proof loses. The equipoise rule finds application if the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, for then the evidence does not fulfill the test of moral certainty, and does not suffice to produce a conviction (*Maria Tin vs. People, G.R. No. 126480, August 10, 2001*)

Legal basis for inflicting punishment

The power to punish violators of criminal law comes within the *police power* of the State. It is the injury inflicted to the public which a criminal action seeks to redress, and not the injury to the individual.

Sources of criminal or penal laws

1. The Revised Penal Code (RPC) (Act No. 3815) and its amendments;
2. Special penal laws passed by the Philippine Commission, Philippine Assembly, Philippine Legislature, National Assembly, the Batasang Pambansa, and Congress of the Philippines;
3. Penal Presidential Decrees issued during Martial Law by President Marcos; and
4. Penal Executive Orders issued during President Corazon Aquino's term.
5. Decisions of the Supreme Court of the Philippines and Spain
6. Código Penal of Spain
7. Various penal ordinances passed by local legislative bodies

NOTE: There are no common law crimes in the Philippines (*Reyes, 2017*), as embodied in the latin maxim *Nullum crimen, nulla poena sine lege*.

Limitations on the power of Congress to enact penal laws

(Article III, Sec 22, 1987 Constitution)

1. **Expost Facto Law** -The Congress cannot make an *ex post facto* law (Article III, Sec 22, 1987 Constitution). This limitation prohibits the passage of retroactive laws which are prejudicial to the accused.
2. The Congress cannot make a bill of attainder (Article III, Sec 22, 1987 Constitution). This limitation requires that criminal laws must be of general application and must clearly define the acts and omissions punished as crimes.

Basic maxims in criminal law

1. **Nullum crimen, nulla poena sine lege** (There is no crime when there is no law punishing the same) – No matter how wrongful, evil or bad the act is, if there is no law defining the act, the same is not considered a crime.
2. **Actus non facit reum, nisi mens sit rea** (The act cannot be criminal where the mind is not criminal) – This is true to a felony characterized by *dolo* (deceit), but not to a felony resulting from *culpa* (fault).
3. **Doctrine of Pro Reo** – Whenever a penal law is to be construed or applied and the law admits of two interpretations, one lenient to the offender and one strict to the offender, that interpretation which is lenient or favorable to the offender will be adopted.
4. **Actus me invito factus non est meus actus** (An act done by me against my will is not my act) – Whenever a person is under a compulsion of irresistible force or uncontrollable fear to do an act against his will, in which that act produces a crime or offense, such person is exempted in any criminal liability arising from said act.

Doctrine of Pro Reo in relation to Article 48 (Penalty for complex crimes) of the RPC (BAR 2010)

Following the Doctrine of *Pro Reo*, crimes under Art. 48 of the RPC are complexed and punished with a single penalty (that prescribed for the most serious crime and to be imposed in its maximum period). The rationale being, that the accused who commits two crimes with a single criminal

impulse demonstrates lesser perversity than when the crimes are committed by different acts and several criminal resolutions (*People v. Comadre, G.R. No. 153559, June 8, 2004*).

Crime

A *crime* is the generic term used to refer to a wrongdoing punished either under the RPC or under a special law.

Classifications of crime

1. **As to the manner or mode of execution (RPC, Art. 3)**
 - a. *Dolo* or felonies committed with deliberate intent
 - b. *Culpa* or those committed by means of fault
2. **As to the stage of execution (RPC, Art. 6)**
 - a. Consummated
 - b. Frustrated
 - c. Attempted
3. **As to gravity (RPC, Art. 9)**
 - a. Light felonies
 - b. Less grave felonies
 - c. Grave felonies
4. **As to nature**
 - a. *Mala in se*
 - b. *Mala prohibita*
5. **As to count**
 - a. Compound
 - b. Composite or special complex
 - c. Complex, under Art. 48 of the RPC
 - d. Continued
 - e. Continuing
6. **As to division**
 - a. Formal felonies – those which are always consummated (*e.g.* physical injuries).
 - b. Material felonies – those which have various stages of execution.
 - c. Those which do not admit of the frustrated stage (*e.g.* rape and theft).

Special law

It is a penal law which punishes acts not defined and penalized by the RPC. They are statutes enacted by the Legislative branch, penal in character, which are not amendments to the RPC.



MALA IN SE AND MALA PROHIBITA

Mala in se vis-à-vis. mala prohibita (BAR 1999, 2001, 2003, 2005, 2010, 2017)

BASIS	MALA IN SE	MALA PROHIBITA
As to their concepts	There must be a criminal intent.	Sufficient that the prohibited act was done.
	Wrong from its very nature.	Wrong merely because it is prohibited by statute.
	Criminal intent governs.	Criminal intent is not necessary.
	Generally punished under the RPC.	Generally involves violation of special laws. NOTE: Not all violations of special laws are <i>mala prohibita</i> . Even if the crime is punished under a special law, if the act punished is one which is inherently wrong, the same is <i>malum in se</i> , and, therefore, good faith and the lack of criminal intent are valid defenses unless they are the products of criminal negligence or culpa.
	Mitigating and aggravating circumstances are appreciated in imposing the penalties.	Such circumstances are not appreciated unless the special law has adopted the

		scheme or scale of penalties under the RPC.
As to legal implication	(a) Good faith (b) lack of criminal intent; or (c) negligence are valid defenses.	(a) Good faith or (b) lack of criminal intent are not valid defenses; it is enough that the prohibition was voluntarily violated.
	Criminal liability is incurred even when the crime is attempted or frustrated.	Criminal liability is generally incurred only when the crime is consummated.
	Penalty is computed on the basis of whether he is a principal offender, or merely an accomplice or accessory.	The penalty of the offender is the same as they are all deemed principals.

NOTE: The crime of technical malversation, punished under Art. 220 of the RPC, was held to be a crime that is *malum prohibitum*. The law punishes the act of diverting public property earmarked by law or ordinance for a particular public purpose for another public purpose. The prohibited act is not inherently immoral, but becomes a criminal offense because positive law forbids its commission on considerations of public policy, order, and convenience. Therefore, good faith and lack of criminal intent are not valid defenses (*Ysidoro v. People*, G.R. No. 192330, November 14, 2012). **(BAR 2015)**

Violations of special laws which are considered *mala in se*

The following examples of violations under special penal laws are considered *mala in se*:

1. Piracy in Philippine waters (PD No. 532)

2. Brigandage in the highways (PD No. 532)
3. Plunder (RA 7080)

NOTE: Likewise, when the special laws require that the punished act be committed knowingly and willfully, criminal intent is required to be proved before criminal liability may arise.

Effect on the nature of the crime when covered by special law and it uses the nomenclature of penalties in the RPC

Even if a special law uses the nomenclature of penalties under the RPC, that alone will not make the act or omission a crime *mala in se*. The special law may only intend for the Code to apply as supplementary to the special law (*People v. Simon, G.R. No. 93028, July 29, 1994*).

CONSTRUCTION OF PENAL LAWS

When the law is clear and unambiguous, there is no room for interpretation but only for the application of the law. However, if there is ambiguity:

1. Penal laws are strictly construed against the State and liberally in favor of the accused.
2. In the interpretation of the provisions of the RPC, the Spanish text is controlling.

APPLICABILITY AND EFFECTIVITY OF THE PENAL CODE

GENERALITY, TERRITORIALITY AND PROSPECTIVITY

Three cardinal features or main characteristics of Philippine criminal law (BAR 1998)

1. Generality

GR: Penal laws and those of public security and safety shall be obligatory upon all who live or sojourn in Philippine territory, subject to the principles of international law and to treaty stipulations. (*Article 14, Civil Code of the Philippines*) (BAR 2015)

XPNS:

- a. Treaty stipulations and international agreements, e.g. *RP-US Visiting Forces Accord*.

- b. Laws of Preferential Application, e.g. RA 75 penalizes acts which would impair the proper observance by the Republic and its inhabitants of the immunities, rights, and privileges of duly-accredited foreign diplomatic representatives in the Philippines. (BAR 2014)
- c. The principles of public international law.
- d. Members of the Congress are not liable for libel or slander in connection with any speech delivered on the floor of the house during a regular or special session (*1987 Constitution, Art. IV, Sec. 11*).
- e. Public vessels of foreign friendly power.
- f. Members of foreign country stationed in the Philippines with its consent.

Examples:

- i. Sovereigns and other Chiefs of States.
- ii. Ambassadors, ministers, plenipotentiary, ministers resident, and charges d' affaires.

NOTE: Only the heads of the diplomatic missions, as well as members of the diplomatic staff, excluding the members of administrative, technical and service staff, are accorded diplomatic rank.

A consul is not entitled to the privileges and immunities of an ambassador or minister

Consuls, vice-consuls, and other commercial representatives of foreign nation are NOT diplomatic officers. Consuls are subject to the penal laws of the country where they are assigned (*Minucher v. CA, G.R. No. 142396, February 11, 2003*).

2. Territoriality

GR: The penal laws of the country have force and effect only within its territory. (BAR 1994)

XPNS: Art. 2 of the RPC (BAR 2000)

1. Should commit an offense while on a Philippine ship or airship (fact of registration is in the Philippines);
2. Should forge or counterfeit any coin or currency note of the Philippine Islands or obligations and securities issued by



the Government of the Philippine Islands(Art. 163 & 166);

3. Should be liable for acts connected with the introduction into these islands of the obligations and securities mentioned in the preceding number;
4. While being public officers or employees, should commit an offense in the exercise of their functions; or
5. Should commit any of the crimes against national security and the law of nations (Art. 114-123).

Extraterritoriality

It means the law will have application even outside the territorial jurisdiction of the state. (*Gapit, 2013*)

X went to Ninoy Aquino International Airport (NAIA) in Pasay City and boarded an airship of the Philippine Airlines destined for the U.S. As the airship passes the Pacific Ocean, X killed Y, a fellow passenger. Which court can try the case of murder committed by X, is it the Philippine Courts or the U.S. Courts?

Answer: The Philippine Courts. Art. 2 of RPC provides that its provisions shall be applied to those who “should commit an offense while on a Philippine ship or airship.” (*Gapit, 2013*)

3. Prospectivity/Irretrospectivity

GR: Acts or omissions classified as crimes will be scrutinized in accordance with the relevant penal laws if these are committed after the effectivity of those penal laws.

The law enforced at the time of the commission of a certain crime should be applied. Article 366 provides that crimes are punished in accordance with the law in force at the time of their commission. (*Gapit, 2013*)

NOTE: *Lex Prospicit, Non Respicit* means the law looks forward, never backward.

XPN: Penal Laws shall have a retroactive effect insofar as they favor the persons guilty of a felony, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same (*RPC, Art. 22*).

XPNs to the XPN: The new law cannot be given retroactive effect even if favorable to the accused:

- a. When the new law is expressly made inapplicable to pending actions or existing causes of actions (*Tavera v. Valdez, G.R. No. 922, November 8, 1902*).
- b. When the offender is a habitual delinquent as defined in Rule 5 in Art. 62 of RPC(*RPC, Art. 22*).

Rule as to Jurisdiction over crimes committed aboard foreign merchant vessels

FRENCH RULE	ENGLISH RULE
GR: Matters happening on board a merchant vessel while in the territorial waters of another country are justiciable only by the courts of the country to which the vessel belongs	GR: Matters happening on board a merchant vessel are justiciable only by the courts of the country where the merchant vessel is (territorial)
XPN: unless their commission affects the peace and security of the territory or the safety of the state is endangered	XPN: unless they merely affect thingswithin the vessel or they refer to the internal management thereof

NOTE: The Philippines observe the English Rule

FELONIES

CRIMINAL LIABILITIES AND FELONIES

Felonies

Felonies are acts or omissions punishable by the RPC.

NOTE: If it is not punished under the RPC, it is called an **offense**.

Act as contemplated in criminal law

An *act* refers to any bodily movement tending to produce some effect in the external world it being unnecessary that the same be actually produced, as the *possibility* of its production is sufficient (*Reyes, 2012*).

Omission as contemplated in criminal law



An omission contemplated in criminal law means inaction; the failure to perform a positive duty which one is bound to do. There must be a law requiring the doing or performance of a duty. (Reyes, 2017)

Examples: Misprision of treason, failure of an accountable officer to render accounts

Elements of felonies (BAR 2015)

1. An act or omission;
2. Punishable by the Revised Penal Code;
3. The act is performed or the omission incurred by means of deceit or fault (*People v. Gonzales, G.R. No. 80762, March 19, 1990*).

Kinds of felonies

1. **Intentional felonies (Dolo)** – committed with deliberate intent to cause injury to another (with malice)
2. **Culpable felonies (Culpa)** – where the wrongful acts result from imprudence, negligence, lack of foresight or lack of skill (unintentional, without malice)

Intentional felony vis-à-vis Negligent felony (BAR 1999, 2001, 2003, 2005, 2010)

BASIS	DOLO	CULPA
As to Malice	Act is malicious	Not malicious
As to intent	With deliberate intent.	Injury caused is unintentional, it being an incident of another act performed without malice.
As to the source of the wrong committed	Has intention to cause a wrong.	Wrongful act results from imprudence, negligence, lack of foresight or lack of skill.

Requisites of dolo

If any of the following requisites is absent, there is no *dolo*.

1. **Criminal intent (mens rea)** – the purpose to use a particular means to effect such result. Intent to commit an act with malice, being purely a mental process, is presumed from the proof of commission of an unlawful act. A mental state, hence, its existence is shown by overt acts.

NOTE: If there is NO criminal intent, the act is justified. Offender incurs NO criminal liability.

2. **Freedom of action** – voluntariness on the part of the person to commit the act or omission.

NOTE: If there is lack of freedom, the offender is *exempt* from liability.

3. **Intelligence** – means the capacity to know and understand the consequences and morality of human acts

NOTE: If there is lack of intelligence, the offender is *exempt* from liability.

Requisites of culpa

1. **Criminal negligence** on the part of the offender, that is, the crime was the result of negligence, reckless imprudence, lack of foresight or lack of skill;
2. **Freedom of action** on the part of the offender, that is, he was not acting under duress; and
3. **Intelligence** on the part of the offender in performing the negligent act.

Negligence

Negligence means deficiency in perception or lack of foresight, or failure to pay proper attention and to use due diligence in foreseeing injury or damage to be caused.

Imprudence

Imprudence means a deficiency in action or lack of skill, or failure to take necessary precaution to avoid injury to another.

Negligence vis-à-vis Imprudence

NEGLIGENCE	IMPRUDENCE
Deficiency of action	Deficiency of perception
Lack of foresight	Lack of skill



Crimes which cannot be committed through culpa (negligence or imprudence)

1. Murder
2. Treason
3. Robbery
4. Malicious mischief

Mens rea

It is the criminal intent or evil mind. In general, the definition of a criminal offense involves not only an act or omission and its consequences but also the accompanying mental state of the actor. *(Encyclopaedia Britannica)*

Examples:

1. In theft, the *mens rea* is the taking of property belonging to another with intent to gain.
2. In falsification, the *mens rea* is the commission of forgery with intent to pervert the truth.
3. In robbery, the *mens rea* is the taking of property belonging to another coupled with the employment of intimidation or violence upon persons or things.

Intent

Refers to the use of a particular means to effect the desired result. It is a mental state, the existence of which is demonstrated by the overt acts of a person.

Categories of intent in criminal law

1. **General criminal intent** – Is presumed from the mere doing of a wrong act (or the *actus reus*). This does not require proof.

NOTE: In felonies by means of *dolo*, the third element of voluntariness is a general intent.

2. **Specific criminal intent** – Is not presumed because it is an ingredient or element of a crime. It must be alleged in the information and must be established and proven by prosecutor.

NOTE: In some felonies, proof of specific intent is required to produce the crime such as in frustrated and attempted homicide, robbery, and acts of lasciviousness.

Presumption of criminal intent from the commission of an unlawful act

Criminal intent is always presumed to exist, provided that there is proof of the commission of an unlawful act.

NOTE: This presumption does not arise when the act performed is lawful. Moreover, the presumption can always be rebutted by proof of lack of intent. **(BAR 2014)**

Crime may be committed without criminal intent (BAR 1996)

A crime may be committed without criminal intent if such is:

1. A negligent felony, wherein intent is substituted by negligence or imprudence
2. A *malum prohibitum*.

Motive

It is the moving power or force which impels a person to a desired result.

Motive as determinant of criminal liability (BAR 1999, 2013)

GR: Motive is not an element of a crime and becomes immaterial in the determination of criminal liability.

XPNS: Motive is material when:

1. The acts bring about variant crimes;

E.g. There is a need to determine whether direct assault is present, as in offenses against person in authority when the assault is committed while not being in the performance of his duties;

2. The identity of the accused is doubtful;
3. The evidence on the commission of the crime is purely circumstantial;
4. In ascertaining the truth between two antagonistic theories or versions of the killing; and
5. Where there are no eyewitnesses to the crime and where suspicion is likely to fall upon a number of persons.

NOTE: Good faith is not a defense to the prosecution of a *malum prohibitum*.

<i>MOTIVE</i>	<i>INTENT</i>
Motive is the moving	Intent is the purpose to

power which impels one to action for a definite result	use a particular means to effect such result.
It is NOT an essential element of a crime. Hence, it need NOT be proved for purposes of conviction	Generally, it is an essential element of a crime.

CLASSIFICATIONS OF FELONIES ART. 9, RPC

Importance of classifying the felonies as to their severity

To determine:

1. Whether these felonies can be complexed or not (*Art. 48, RPC*);
2. The prescription of the crime and the prescription of the penalty (*Art. 90, RPC*);
3. Whether the accessory is liable (*Art. 16, RPC*);
4. The duration of the subsidiary penalty [*Art. 39(2), RPC*];
5. The duration of the detention in case of failure to post the bond to keep the peace (*Art. 35*); and
6. The proper penalty for quasi-offenses (*Art. 365, par. 1, RPC*).

Classifications of felonies according to their gravity

1. **Grave**– those to which the law attaches the capital punishment or penalties which in any of their periods are afflictive, in accordance with Art. 25 of the RPC (*RPC, Art. 9, par. 1*).
2. **Less grave** – those which the law punishes with penalties which in their maximum period are correctional, in accordance with Art. 25 of the RPC (*Art. 9, par. 2, RPC*).

NOTE: The criminal can still be rehabilitated and hence can be the subject of probation and Alternative Dispute Resolution insofar as the civil aspect is concerned.

3. **Light**– those infractions of law for the commission of which the penalty of *arresto menor* or a fine not exceeding 200 pesos, or both, is provided (*RPC, Art. 9, par. 3*).

Factors to be considered in imposing a penalty for felonies punished under RPC

1. Stages of execution;
2. The degree of participation; and
3. The presence of attending circumstances.

NOTE: For special penal laws, it must be expressly provided that the aforementioned factors are to be considered

Persons liable for grave or less grave felonies

The principals, accomplices and accessories.

When light felonies are punishable

GR: Light felonies are punishable only when they are consummated.

E.g. An attempt to conceal one's true name under the 2nd par. of Art. 178 is not punishable. Also, an attempt to commit Alarms and Scandals (*Art. 155, RPC*).

RATIO: It involves insignificant moral and material injuries, if not consummated, the wrong done is so slight that a penalty is unnecessary (or the *de minis* principle).

XPN: Article 7 provides that light felonies are punishable in all stages when committed against persons or property. (E.g. A thing stolen with a value that does not exceed 5 pesos which carries the penalty of *arresto menor*, may be the subject of an attempted theft).

NOTE: However, this provision is not always applicable.

E.g. If the offender is only an accomplice and there are two or more mitigating circumstances without any compensating aggravating circumstance, the appropriate penalty will be two degrees lower. It must be noted that the penalty lower than *arresto menor* is public censure. There is no two degrees lower than *arresto menor*.

Persons liable in light felonies

Only the principals and their accomplices are made liable for the commission of light felonies. Accessories are not liable for the commission of light felonies. (*RPC, Art. 19*)



Crimes considered as light felonies

1. Slight physical injuries (Art. 266);
2. Theft (Art. 309, pars. 7 and 8);
3. Alteration of boundary marks (Art. 313);
4. Malicious mischief (Art. 328, par. 3; Art. 329, par. 3);
5. Intriguing against honor (364); and
6. Alarms and Scandals.

NOTE: If one assists in the escape of another who committed Alarms and Scandals, he is not liable under RPC but may be liable under PD 1829.

**ELEMENTS OF CRIMINAL LIABILITY
ART. 4, RPC**

Criminal liability (BAR 1997, 1999, 2001, 2004, 2009)

Criminal liability is incurred by any person:

1. Committing a felony although the wrongful act done be different from that which he intended (*RPC, Art. 4 par. 1*); and
2. Performing an act which would be an offense against persons or property, were it not for the inherent impossibility of its accomplishment or on account of the employment of inadequate or ineffectual means (*RPC, Art. 4, par. 2*).

Requisites of the Proximate Cause Doctrine (RPC, Art 4, par. 1),

1. That an intentional felony has been committed; and
2. That the wrong done to the aggrieved party be the direct, natural and logical consequence of the felony committed by the offender (*U.S. v. Brobst, G.R. No. 4935, October 25, 1909*).

When considered as the “direct, natural and logical consequence” of the felonious act

1. Blow was efficient cause of death;
2. Blow accelerated death; or
3. Blow was proximate cause of death (*Reyes, 2017*)

Q: In an act to discipline his child, the father claims that the death of his child was not intended by him. Is his contention correct?

A: NO. He is liable under Art. 4(1) of the RPC. In order that a person may be criminally liable for a felony different from that which he intended to commit, it is indispensable (a) that a felony was committed and (b) that the wrong done to the aggrieved person be the direct consequence of the crime committed by the perpetrator. In beating his son and inflicting upon him physical injuries, he committed a felony. As a direct consequence of the beating suffered by the child, he expired. His criminal liability for the death of his son, is thus clear (*People v. Sales, G.R. No. 177218, October 3, 2011*).

Causes which may produce a result different from that which the offender intended

1. Mistake in identity (error in personae)–The offender intends the injury on one person but the harm fell on another. In this situation the intended victim was not at the scene of the crime

Example: A, wanting to kill B, killed C instead. (**BAR 2003, 2015**)

NOTE: There are only two persons involved: the actual but unintended victim, and the offender.

EFFECT: Art. 49 of RPC.

It depends when the intended crime and the crime actually committed are punished with different penalties (*Reyes, 2017*)

- If punished with same penalties: no effect
 - GR: If punished with different penalties, the lesser penalty shall be imposed in its maximum period (it becomes a mitigating circumstance).
- XPN: Art. 49 par. 3.

2. Mistake in blow (aberratio ictus)–A person directed the blow at an intended victim, but because of poor aim, that blow landed on somebody else. In *aberratio ictus*, the intended victim and the actual victim are both at the scene of the crime. (A, shot at B, but because of lack of precision, hit C instead). (**BAR 1993, 1994, 1996, 1999, 2015**)

NOTE: There are three persons involved: the offender, the intended victim, and the actual victim.

EFFECT: there are two crimes committed:

- (1) Against the intended victim: attempted stage of the felony
- (2) Against the actual victim: the consummated or frustrated felony, as the case may be.

NOTE: It may give rise to a complex crime under Art. 48 since it results from a single act

3. Injurious consequences are greater than that intended (*praeter intentionem*)—The injury is on the intended victim but the resulting consequence is so grave a wrong than what was intended. It is essential that there is a notable disparity between the means employed or the act of the offender and the felony which resulted.

This means that the resulting felony cannot be foreseen from the acts of the offender. (A, without intent to kill, struck the victim on the back, causing the victim to fall down and hit his head on the pavement.)

EFFECT: *Praeter intentionem* is a mitigating circumstance particularly covered by paragraph 3 of Art. 13.

The three enumerated situations are always the result of an intentional felony or *dolo*. These situations do not arise out of criminal negligence.

Aberratio ictus vis-à-vis Error in personae

BASIS	ABERRATIO ICTUS	ERROR IN PERSONAE
How committed	A person directed the blow at an intended victim, but because of poor aim, that blow landed on somebody else.	The victim actually received the blow, but he was mistaken for another who was not at the scene of the crime.
Parties present	The offender, the intended victim as well as the actual	There are only two persons present in <i>error in personae</i> - the

	victim are all at the scene of the crime.	actual (not the intended victim) and the offender.
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NOTE: *Error in Personae* and *Aberatio Ictus* are NOT valid defenses under the "Transfer Intent" doctrine: the law transfers the criminal intent to the actual victim.

Q: A and B went on a drinking spree. While they were drinking, they had some argument so A stabbed B several times. A's defense is that he had no intention of killing his friend and that he did not intend to commit so grave a wrong as that committed. Is *praeter intentionem* properly invoked?

A: NO, *praeter intentionem* is improperly invoked because it is only mitigating if there is a notable disparity between the means employed and the resulting felony. The fact that several wounds were inflicted on B is hardly compatible with the idea that he did not intend to commit so grave a wrong as that committed.

Mistake of fact

Mistake of fact is the misapprehension of facts on the part of the person who caused injury to another. He is not, however, criminally liable, because he did not act with criminal intent. It is necessary that had the facts been true as the accused believed them to be, the act is justified. Moreover, the offender must believe that he is performing a lawful act.

An honest mistake of fact destroys the presumption of criminal intent which arises upon the commission of a felonious act.

NOTE: Mistake of fact is a defense only in intentional felonies.

Requisites of mistake of fact

1. That the act done would have been lawful had the facts been as the accused believed them to be;
2. That the intention of the accused in performing the act is lawful; and
3. That the mistake must be without fault or carelessness on the part of the accused.



Q: Ah Chong was afraid of bad elements so one evening, before going to bed, he locked himself in his room and placed a chair against the door. After going to bed, he was awakened by someone who was trying to open the door. He called out, "Who is there?" twice but received no answer. He then said, "If you enter the room, I will kill you." At that moment, he was struck by the chair. Believing he was being attacked, he took a kitchen knife and stabbed the intruder who turned out to be his roommate. Is he criminally liable?

A: NO. There was mistake of fact. Had the facts been as Ah Chong believed them to be, he would have been justified in killing the intruder under Article 11, paragraph 1; self-defense (*U.S. v. Ah Chong*, G.R. No. L-5272, March 19, 1910).

Proximate cause

Proximate cause has been defined as that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred (*Bataclan v. Medina*, 102 Phil. 181).

As a rule, the offender is criminally liable for all the consequences of his felonious act, although not intended, if the felonious act is the proximate cause of the felony.

Requisites of proximate cause

1. The direct, natural, and logical cause;
2. Produces the injury or damage;
3. Unbroken by any efficient intervening cause; and
4. Without which the result would not have occurred

Difference between proximate cause and immediate cause

Immediate cause may be a cause which is far and remote from the consequence which sets into motion other causes that resulted in the felony.

Proximate cause does not require that the offender needs to actually touch the body of the offended party. It is enough that the offender generated in the mind of the offended party the belief that made him risk himself.

If a man creates in another person's mind an immediate sense of danger, which causes such person to try to escape, and, in so doing, the latter injures himself, the man who creates such a state of mind is responsible for the resulting injuries (*People v. Toling*, G.R. L-27097, January 17, 1975).

Example:

X and Y are crew members of cargo vessel. They had a heated argument. X with a big knife in hand threatened to kill Y. The victim Y, believing himself to be in immediate peril, threw himself into the water. Y died of drowning. In this case, X is liable for homicide for the death of Y.

Even if other causes cooperated in producing the fatal result as long as the wound inflicted is dangerous, that is, calculated to destroy or endanger life, the actor is liable.

It is important that there be no efficient intervening cause.

Instances when the felony committed is not the proximate cause of the resulting injury

The felony committed is not the proximate cause of the resulting injury when:

1. There is an efficient intervening cause between the felony committed and the resulting injury; or
2. Resulting injury or damage is due to the intentional act of the victim.

Efficient intervening cause

It is an intervening active force which is a distinct act or fact absolutely foreign from the felonious act of the accused.

Q: Cruz and Villacorta were regular customers at Mendeja's store. At around two o'clock in the morning of January 23, 2002, while Cruz was ordering bread at Mendeja's store, Villacorta suddenly appeared and, without uttering a word, stabbed Cruz on the left side of Cruz's body using a sharpened bamboo stick. When Villacorta fled, Mendeja chased Villacorta but failed to catch him. When Mendeja returned to her store, she saw Aron removing the broken bamboo stick from Cruz's body. Mendeja and Aron then brought Cruz to Tondo Medical Center and was treated as an

outpatient. Cruz was later brought to the San Lazaro Hospital on February 14, 2002, where he died the following day of tetanus infection secondary to stab wound. What is the proximate cause for the death of Cruz?

A: The proximate cause of Cruz's death is the tetanus infection, and not the stab wound. There had been an interval of 22 days between the date of the stabbing and the date when Cruz was rushed to San Lazaro Hospital, exhibiting symptoms of severe tetanus infection. If Cruz acquired severe tetanus infection from the stabbing, then the symptoms would have appeared a lot sooner than 22 days later. Cruz's stab wound was merely the remote cause, and its subsequent infection with tetanus might have been the proximate cause of Cruz's death. The infection of Cruz's stab wound by tetanus was an efficient intervening cause later or between the time Cruz was stabbed to the time of his death (*People v. Villacorta*, G.R. No. 186412, September 7, 2011).

Q: A and B had a quarrel and started hacking each other. B was wounded at the back. Cooler heads intervened and they were separated. Somehow, their differences were patched up. A agreed to shoulder all the expenses for the treatment of the wound of B, and to pay him also whatever lost of income B may have failed to receive. B, on the other hand, signed a forgiveness in favor of A and on that condition, he withdrew the complaint that he filed against A. After so many weeks of treatment in a clinic, the doctor pronounced the wound already healed. Thereafter, B went back to his farm. Two months later, B came home and he was chilling. Before midnight, he died out of tetanus poisoning. The heirs of B filed a case of homicide against A. Is A liable?

A: NO. Taking into account the incubation period of tetanus toxic, medical evidence were presented that tetanus toxic is good only for two weeks. That if, indeed, the victim had incurred tetanus poisoning out of the wound inflicted by A, he would not have lasted two months. What brought about tetanus to infect the body of B was his working in his farm using his bare hands. Because of this, the SC ruled that the act of B of working in his farm where the soil is filthy, using his own hands, is an efficient supervening cause which relieves A of any liability for the death of B. A, if at

all, is only liable for physical injuries inflicted upon B (*Urbano v. IAC*, G.R. No. 7296, January 7, 1988).

Circumstances which are considered as inefficient intervening causes

1. The weak physical condition of the victim
2. The nervousness or temperament of the victim
3. Causes which are inherent in the victim, such as the victim's inability to swim
4. Refusal of the injured party to be subjected to medical attendance
5. Erroneous or unskillful medical treatment

NOTE: Although the above-mentioned circumstances may have intervened in the commission of the crime, the offender is still liable for the resulting crime because the proximate cause his act remains and these circumstances are inefficient.

Death is presumed to be the natural consequence of physical injuries inflicted

The death of the victim is presumed to be the natural consequence of the physical injuries inflicted, when the following facts are established:

1. That the victim at the time the physical injuries were inflicted was in normal health.
2. That death may be expected from the physical injuries inflicted.
3. That death ensued within a reasonable time.

**IMPOSSIBLE CRIME
ART. 4(2), RPC**

Requisites of an impossible crime (BAR 2003, 2004, 2009, 2014, 2015)

1. Act performed would be an offense against persons or property (see list of crimes under Title 8 and Title 10, Book 2, RPC)
2. Act was done with evil intent;
3. Accomplishment is inherently impossible or means employed is either inadequate or ineffectual; and
4. Act performed should not constitute a violation of another provision of RPC

NOTE: The offender must believe that he can consummate the intended crime. A man stabbing another who he knew was already dead cannot be liable for an impossible crime.

NOTE: There is no impossible crime of kidnapping.

Essence of an impossible crime

The essence of an impossible crime is the inherent impossibility of accomplishing the crime or the inherent impossibility of the means employed to bring about the crime.

Inherent impossibility

Inherent impossibility means that under any and all circumstances, the crime could not have materialized.

Kinds of inherent impossibility

1. **Legal impossibility**– occurs where the intended acts, even if completed would not amount to a crime. (*E.g.* killing a dead person.)
2. **Physical impossibility**– occurs where extraneous circumstances unknown to the accused prevent the consummation of the intended crime. (*E.g.* pick pocketing an empty wallet.)

Employment of inadequate means

It is the use of means whose quality or quantity is insufficient to produce the intended felony.

NOTE: The difference between attempted/frustrated crime and impossible crime is that in attempted/frustrated crime, the means are sufficient and adequate but the intended crime was not produced.

Employment of ineffectual means

The means employed cannot in any way produce the intended crime. *E.g.* poisoning a person with sugar.

Penalty imposed on impossible crimes

The penalty imposed shall be that of *arresto mayor* or a fine ranging from 200 to 500 pesos.

Reason for penalizing impossible crimes

To teach the offender a lesson because of his criminal perversity. Although objectively, no crime is committed, but subjectively, he is a criminal.

NOTE: It is a principle of criminal law that the offender will only be penalized for an impossible crime if he cannot be punished under some other provision of the RPC. An impossible crime is a crime of last resort.

Q: Four culprits, all armed with firearms and with intent to kill, went to the intended victim's house and after having pinpointed the latter's bedroom, all four fired at and riddled said room with bullets, thinking that the intended victim was already there as it was about 10:00 in the evening. It so happened that the intended victim did not come home on the evening and so was not in her bedroom at that time. Was it an impossible crime or attempted murder?

A: The SC held that the culprits are liable only for the so-called impossible crime. The factual situation in this case presents a physical impossibility which rendered the intended crime impossible of accomplishment. Under Art. 4 of the RPC, such is sufficient to make the act an impossible crime (*Intod v. CA, G.R. No. 103119, October 21, 1992*). Here however, their acts constitute malicious mischief.

Q: A, a collector of Mega Foam failed to remit to the company a check which was given to him as payment for a merchandise. She tried to deposit the check, but he found out that the check bounced. What crime was committed?

A: The crime committed is an impossible crime of theft. The evil intent cannot be denied, as the mere act of unlawfully taking the check meant for Mega Foam showed her intent to gain or be unjustly enriched. Were it not for the fact that the check bounced, she would have received the face value thereof, which was not rightfully hers. Therefore, it was only due to the extraneous circumstance of the check being unfunded, a fact unknown to the accused at the time, that prevented the crime from being produced. The thing unlawfully taken by the accused turned out to be absolutely worthless, because the check was eventually dishonored, and Mega Foam had received the cash to replace the value of said dishonored check (*Jacinto v. People, G.R. No. 162540, July 2009*).

Q: Buddy always resented his classmate, Jun. One day, Buddy planned to kill Jun by mixing poison in his lunch. Not knowing where he can get poison, he approached another classmate Jerry to whom he disclosed his evil plan. Because he himself harbored resentment towards Jun, Jerry gave Buddy a poison, which Buddy placed on Jun's food. However, Jun did not die because; unknown to both Buddy and Jerry, the poison was actually powdered milk. What crime or crimes, if any, did Jerry and Buddy commit? (*BAR 1998, 2000, 2003, 2004, 2009*)

A: Jerry and Buddy are liable for the so-called impossible crime because, with intent to kill, they tried to poison Jun and thus perpetrate murder, a crime against persons. Jun was not poisoned only because the would-be killers were unaware that what they mixed with the food of Jun was powdered milk, not poison. Criminal liability is incurred by them although no crime resulted, because their act of trying to poison Jun is criminal.

Impossible crime a formal crime

By its very nature, an impossible crime is a formal crime. It is either consummated or not consummated at all. There is therefore no attempted or frustrated impossible crime. (*BAR 2005*)

Impossible crime vis-à-vis Unconsummated felonies (attempted or frustrated felony)

UNCONSUMMATED FELONIES	IMPOSSIBLE CRIMES
Intent is not accomplished.	
Intent of the offender has possibility of accomplishment.	Intent of the offender cannot be accomplished.
Accomplishment is prevented by the intervention of certain cause or accident in which the offender had no part.	Intent cannot be accomplished because it is inherently impossible to accomplish or because the means employed by the offender is inadequate or ineffectual.

STAGES OF EXECUTION ART. 6, RPC

Stages in committing a crime

1. **Internal Acts**– mere ideas in the mind of a person, not punishable even if, had they been carried out, they would constitute a crime
2. **External Acts** – include (a) preparatory acts and (b) acts of execution
 - a. **Preparatory acts**–those that do not have a direct connection with the crime which the offender intends to commit.

GR: These are ordinarily not punishable

XPN: When expressly provided for or when they are considered in themselves as independent crimes. (*e.g.* Possession of picklocks under Art. 304, which is a preparatory act to the commission of robbery under Arts. 299 and 302).

- b. **Acts of execution**–punishable under the Revised Penal Code

Stages of acts of execution

1. Consummated
2. Frustrated (*BAR 1992, 1994, 2009*)
3. Attempted

Purpose of the classification of felonies

To bring about a proportionate penalty and equitable punishment.

NOTE: The penalties are graduated according to their degree of severity. The stages may not apply to all kinds of felonies. There are felonies which do not admit of division.

Phases of felony

1. **Subjective phase** – that portion of execution of the crime starting from the point where the offender begins up to that point where he still has control over his acts. If the subjective phase has not yet passed, the felony would be a mere attempt. If it already passed, but the felony is not produced, as a rule, it is frustrated. (*Reyes, 2017*)

NOTE: If it reaches the point where he has no more control over his acts, the subjective phase has passed.



2. **Objective phase** – the offender has performed until the last act and is no longer in control of its natural course.

Consummated felony

A felony is consummated when all the acts necessary for its accomplishment and execution are present(RPC, Art 6).

Frustrated felony

A felony is frustrated when the offender performs all the acts of execution which would produce the felony as a result, but which nevertheless do not produce it by reason of causes independent of the will of the perpetrator (RPC, Art 6).

Q: X stabbed Y in the abdomen, penetrating the liver and chest of Y. Y was rushed to the hospital and was given immediate medical treatment. Is X liable for consummated homicide?

A: NO, because the prompt medical treatment received by the offended party saved his life (*People v. Honrada, G.R. No. 112178-79, April 21, 1995*).

Q: Villostas went to a nearby videoke bar to buy cigarettes. Once inside the bar, he was stabbed by Olate, Ario and Pasquin on different parts of his body. When Villostas was rushed to the hospital the he was treated and the doctor testified that all the injuries suffered by Villostas were fatal and would cause his death were it not for the timely medical attention given to him. Is Olate, Ario, and Pasquin guilty of Frustrated Homicide?

A: Yes. All the elements of frustrated homicide are present. First, their intent to kill is manifested by the weapon used which is a pointed sharp object. Second, the victim suffered numerous fatal wounds, but he did not die due to the timely medical assistance given to him. Third, none of the qualifying circumstances for murder is present.

Q: A, a doctor, conceived the idea of killing his wife B, and to carry out his plan, he mixed arsenic with the soup of B. Soon after taking the poisonous food, A suddenly had a change of heart and washed out the stomach of B. A also

gave B an antidote. Is A liable for frustrated parricide?

A: NO, the cause which prevented the consummation of the crime was not independent of the will of the perpetrator. It cannot be considered attempted parricide, because A already performed all acts of execution. A can only be liable for physical injuries.

Q: Jessiriel Leyble was waylaid and shot with a firearms by the group of Eden Etino et al. ETINO only fired a single shot at close range, but did not hit any vital part of the victim's body. The victim's wounds, based on his Medical Certificate, were located at the right deltoid through and through, and the left shoulder, and he immediately fled the scene right after the shooting. It appears that he did not sustain any fatal injury as a result of the shooting, considering that he and his companions even went in pursuit of petitioner after the incident. RTC found petitioner guilty beyond reasonable doubt of the crime of frustrated homicide, to which the CA affirmed.

A: It cannot be reasonably concluded that petitioner's use of a firearm was sufficient proof that he had intended to kill the victim, After all, it is settled that "Intent to kill cannot be automatically drawn from the mere fact that the use of firearms is dangerous to life." Rather, "Animus interficendi must be established with the same degree of certainty as is required of the other elements of the crime. The inference of intent to kill should not be drawn in the absence of circumstances sufficient to prove such intent beyond reasonable doubt. When the intent to kill is lacking, but wounds are shown to have been inflicted upon the victim, as in this case, the crime is not frustrated or attempted homicide but physical injuries only.(*Etino vs. People,G.R. No. 206632, Feb. 14, 2018*)

Crimes which do not admit of a frustrated stage

1. **Rape** – the gravamen of the offense is carnal knowledge, hence, the slightest penetration to the female organ consummates the felony.
2. **Corruption of public officers** – mere offer consummates the crime.
3. **Physical injury** – consummated at the instance the injuries are inflicted.

4. **Adultery** – the essence of the crime is sexual congress.
5. **Theft**– the essence of the crime is the taking of property belonging to another. Once the thing has been taken, or in the possession of another, the crime is consummated. **(BAR 2014)**

Attempted felony

There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony, by reason of some cause or accident other than his own spontaneous desistance (*RPC, Art 6*).

NOTE: The word *directly*, emphasizes the requirement that the attempted felony is that which is directly linked to the overt act performed by the offender not the felony he has in his mind.

ATTEMPTED FELONY	FRUSTRATED FELONY
Offender has not accomplished his criminal purpose	
Only commenced the commission of an act directly by overt acts but did not perform all the acts of execution	Has performed all the acts of execution
The offender has not passed the subjective phase	The offender has reached the objective phase

Overt acts

Overt acts are some physical activity or deed, indicating the intention to commit a particular crime, more than mere planning or preparation, which if carried to its complete termination following its natural course, without being frustrated by external obstacles nor by the voluntary desistance of the perpetrator, will logically and necessarily ripen into a concrete offense (*Reyes, 2017*).

Indeterminate offense

It is where the purpose of the offender in performing an act is not certain. Its nature and relation to its objective is ambiguous (*Reyes, 2017*).

Q: A person enters the dwelling of another. However, at the very moment of his entry and

before he could do anything, he is already apprehended by the household members, can he be charged with attempted robbery?

A: NO. The act of entering alone is not yet indicative of robbery although he may have planned to do so. Instead, he may be held liable for trespassing.

Q: One night Jugeta with his cohorts had gone to the residence of the victim where they violated his domicile by first pulling off the sack that covers their nipa hut where they slept. The victim pleaded to accused-Jugeta to stop but the latter instead fired a shot wherein the victim used his body to cover his family. Jugeta still fired volleys of shots which landed fatally on the body of the daughters of the victim. The two daughters expired upon arrival in the hospital. Is Jugeta liable for double murder and multiple attempted murder?

A: YES. Notwithstanding the other crimes JUGUETA committed, he is also liable for multiple attempted murder since the design of the crime was to neutralize the entire family instead of the two daughters specifically. They have commenced all the acts of execution but was not able to push through due to reasons unknown to them (*People v. Jugeta, G.R. No. 202124, April 5, 2016*).

Criteria involved in determining the stage (whether it be in attempted, frustrated or consummated stage) of the commission of a felony

1. The *manner* of committing the crime;
2. The *elements* of the crime; and
3. The *nature* of the crime itself.

The difference between the attempted stage and the frustrated stage lies on whether the offender has performed all the acts of execution for the accomplishment of a felony.

Literally, under Article 6, if the offender has performed all the acts of execution which should produce the felony as a consequence but the felony was not realized, then the crime is already in the frustrated stage.

If the offender has not yet performed all the acts of execution but he was not able to perform all the acts of execution due to some cause or accident



other than his own spontaneous desistance, then it is an attempted felony.

NOTE: The SC held that in case of killing, whether parricide, homicide or murder, the killing will be in the frustrated stage if the injury sustained is **fatal**, sufficient to bring about death but death did not supervene because the immediate medical intervention. If the wound inflicted was **not fatal**, the crime is only in its attempted stage because the offender still has to perform another act in order to consummate the crime (*People v. Gutierrez*, G.R. No. 188602, February 4, 2010).

Instances wherein the stages of a crime will not apply

1. Offenses punishable by Special Penal Laws, unless otherwise provided for;
2. Formal crimes (e.g. *slander, adultery, etc.*);
3. Impossible crimes;
4. Crimes consummated by mere attempt (e.g. *attempt to flee to an enemy country*);
5. Felonies by omission; and
6. Crimes committed by mere agreement (e.g. *betting in sports, corruption of public officers*).

Q: Two police dressed as civilians were conducting surveillance in Binangonan, Rizal. They went near a store when suddenly Rolando and his wife arrived and approached the police officers not knowing their real identity. Rolando spoke to one of the officers and asked “*gusto mo bang umi-score ng shabu?*” The officer replied, “*bakit, meron ka ba?*” Rolando answered in the affirmative and then he took a sachet of *shabu* and showed it. When the officer asked how much the shabu was, Rolando replied P200. Upon seeing the sachet, the police officers immediately introduced themselves and arrested Rolando and his wife. They were charged of attempted illegal sale of dangerous drugs which is found under Sec 26 of RA 9165. Can there be an attempted stage in the illegal sale of dangerous drugs?

A: YES. According to the SC, the identity of the buyer and seller are present. The seller was Rolando while the buyers would be the officers. The *corpus delicti* was also established however, there was no delivery because they immediately introduced themselves as police officers therefore; the consummated sale of the drugs was aborted

by the act of the police introducing themselves and arresting Rolando. Hence, the crime committed is only attempted illegal sale of dangerous drugs (*People v. Rolando Laylo y Cepres*, G.R. No. 192235, July 6, 2011).

FORMAL CRIMES	MATERIAL CRIMES
Consummated in one instant, no attempt (e.g. physical injuries, false testimony, oral defamation)	There are three stages of execution

**CONSPIRACY AND PROPOSAL
ART. 8, RPC**

Conspiracy

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. (**BAR 1996, 1997, 1998, 2003, 2005**)

GR: When conspiracy exists, the degree of participation of each conspirator is not considered because the act of one is the act of all, they have equal criminal responsibility.

XPN: Even though there was conspiracy, if a co-conspirator merely cooperated in the commission of the crime with insignificant or minimal acts, such that even without his cooperation, the crime could be carried out as well, such co-conspirator should be punished as an accomplice only (*People v. Niem*, G.R. No. 521, December 20, 1945).

XPN to the XPN: When the act constitutes a single indivisible offense.

Requisites of conspiracy

1. Two or more persons came to an agreement;
2. Agreement concerned the commission of a crime; and
3. Execution of a felony was decided upon.

NOTE: Mere knowledge, acquiescence to, or approval of the act, without cooperation or at least, agreement to cooperate, is not enough to constitute a conspiracy. Except when he is the mastermind in a conspiracy, it is necessary that a conspirator should have performed some overt act as a direct or indirect contribution in the execution of the crime planned to be committed. The overt act may consist of:

1. Active participation in the actual commission of the crime itself;
2. Moral assistance to his co-conspirators by being present at the commission of the crime; or
3. Exerting moral ascendancy over the other co-conspirators.

Two kinds of conspiracy

1. **Conspiracy as a crime** – The mere conspiracy is the crime itself. This is only true when the law expressly punishes the mere conspiracy, otherwise, the conspiracy does not bring about the commission of the crime because conspiracy is not an overt act but a mere preparatory act.

Conspiracy must be proven on the same quantum of evidence as the felony subject of the agreement of the parties. It may be proved by direct or circumstantial evidence consisting of acts, words, or conduct of the alleged conspirators prior to, during and after the commission of the felony to achieve a common design or purpose” (*Franco v. People*, G.R. No. 171328, February 16, 2011).

Examples: Conspiracy to commit treason, conspiracy to commit rebellion, conspiracy to commit acts like sale, importation and distribution of drugs, conspiracy to commit access devise fraud, conspiracy to commit terrorism

NOTE: If one of the traitors/rebels actually commits treason/rebellion, conspiracy loses its juridical personality and it becomes a mode to commit a crime.

2. **Conspiracy as a basis of incurring criminal liability** – When the conspiracy is only a basis of incurring criminal liability, there must be an overt act done before the co-conspirators become criminally liable. (**BAR 1996, 1997, 1998, 2003, 2005**)

GR: As long as he appeared in the scene of the crime, he is liable as a co-conspirator.

XPNS:

1. If he is a mastermind, he does not have to be in the scene of the crime to be co-conspirator.

2. If he performs an overt act in the performance of the conspiracy, even if it is not in the scene of the crime per se like the driver of a get-away car who planned the crime as well, or the man who pressed the button of a remote control bomb and the bomb exploded a few streets away.

Q: Juan and Arturo devised a plan to murder Joel. In a narrow alley near Joel's house, Juan will hide behind the big lamppost and shoot Joel when the latter passes through on his way to work. Arturo will come from the other end of the alley and simultaneously shoot Joel from behind.

On the appointed day, Arturo was apprehended by the authorities before reaching the alley. When Juan shot Joel as planned, he was unaware that Arturo was arrested earlier. Discuss the criminal liability of Arturo, if any.

A: Arturo, being one of the two who devised the plan to murder Joel, thereby becomes co-principal by direct conspiracy. What is needed only is an overt act and both will incur criminal liability. Arturo's liability as a conspirator arose from his participation in jointly devising the criminal plan with Juan, to kill Joel and it was pursuant to that conspiracy that Juan killed Joel. There being a conspiracy, the act of one is the act of all. Arturo, therefore, should be liable as a co-conspirator.

Effect of conspiracy if not all the elements of the crime is present as regards the co-conspirator

GR: When there is conspiracy, the fact that the element of the offense is not present as regards one of the conspirators is immaterial.

XPNS:

1. In *parricide* – the element of relationship must be present as regards the offenders.
2. In *murder* – where treachery is an element of the crime, all offenders must have knowledge of the employment of the treachery at the time of the execution of the act.

Ways in committing conspiracy (BAR 1996)



1. **Express Conspiracy** – There is an express agreement.

NOTE: The liability of the conspirators is only for the crime agreed upon, except when:

- a. The other crime was committed in their presence and they did not prevent its commission;
 - b. When the other crime is the natural consequence of the crime planned (e.g. homicide resulting from physical injuries);
 - c. When the resulting crime was a composite crime or a special complex crime.
2. **Implied Conspiracy** – The offenders acted in concert in the commission of the crime. Their acts are coordinated or synchronized in a way indicative that they are pursuing a common criminal objective, and they shall be deemed to be acting in conspiracy and their criminal liability shall be collective, not individual.

Instances where unity of purpose and intention in the commission of the crime is shown

1. Spontaneous agreement at the moment of the commission of the crime is sufficient to create joint responsibility.
2. Active cooperation by all offenders in the perpetuation of a crime will create joint responsibility.

Q: Cesario died as he was stoned, shot, and was attempted to be pierced by an arrow by his relatives. Eddie was the one who shot the victim while the other accused threw stones and fired an arrow (but missed). They were all adjudged guilty of murder by conspiring with each other. They claim it was only Eddie who shot Cesario and the therefore the others shall not be liable.

A: All are liable. Conspiracy was proven in this case. Conspiracy may also be proven by circumstantial evidence when it can be inferred from the acts which would prove a joint purpose and design, concerted action, and community of interest.

They "performed specific acts with closeness and coordination as to unmistakably indicate a

common purpose and design" to ensure the death of Cesario. (G.R. No. 177751. December 14, 2011)

Overlapping conspiracy

It depicts a picture of a conspirator in the first level of conspiracy performing acts which implement, or in furtherance of, another conspiracy in the next level of which the actor is not an active party (*People v. Sandiganbayan*, G.R. No. 158754, August 10, 2007).

Chain conspiracy in dangerous drugs

There are series of overlapping transactions which are construed to involve only one overall agreement. The different transactions are considered the links in the overall agreement, which is considered the chain. However, the transactions will only be considered links in a chain if each link knows that the other links are involved in the conspiracy and each link has a vested interest in the success of the overall series of transactions (*US v. Bruno*, 308 U.S. 287, December 4, 1939). There is successive communication and cooperation in much the same way as with legitimate business operations between manufacturer and wholesaler, then wholesaler and retailer, and then retailer and consumer (*Estrada v. Sandiganbayan*, G.R. No. 148965, February 26, 2002).

Wheel or circle conspiracy on plunder

There is a single person or group called the "hub," dealing individually with two or more other persons or groups known as the "spoke" and the rim that encloses the spokes is the common goal in the overall conspiracy (*Estrada v. Sandiganbayan*, G.R. No. 148965, February 26, 2002).

Evident premeditation in conspiracy

Evident premeditation is not automatic in conspiracy. It shall depend on the kind of conspiracy employed. It may be appreciated in express. In implied conspiracy, generally, it cannot be appreciated, absent any proof showing how and when the plan to kill the victim was hatched or the time that elapsed when it was carried out.

Legal effects of implied conspiracy (BAR 1998, 2003)

1. Not all those who are present at the scene will be considered as conspirators;
2. Only those who participated by criminal acts in the commission of the crime will be considered as co-conspirators; and
3. Mere acquiescence to or approval of the commission of the crime, without any act of criminal participation, shall not render one criminally liable as co-conspirator.

NOTE: In order to hold someone criminally liable for implied conspiracy, in addition to mere presence, there should be overt acts that are closely-related and coordinated to establish the presence of common criminal design and community of purpose in the commission of the crime.

Requirement of proof of a previous agreement to commit a crime

In conspiracy, it is not necessary to adduce direct evidence of a previous agreement to commit a crime. Proof of a previous agreement and decision to commit the crime is not essential but the fact that the malefactors acted in unison pursuant to the same objective suffices (*People v. Agacer et al.*, G.R. No. 177751, December 14, 2011).

Conspiracy may be proven by direct or circumstantial evidence consisting of acts, words, or conduct of the alleged conspirators before, during, and after the commission of the felony to achieve a common design or purpose. Proof of the agreement need not rest on direct evidence, and may be inferred from the conduct of the parties indicating a common understanding among them with respect to the commission of the offense. It is likewise not necessary to show that such persons met together and entered into an explicit agreement setting out the details of an unlawful scheme or the details by which an illegal objective is to be carried out (*People v. Pepino and Gomez*, G.R. No. 174471, January 12, 2016).

Q: Does conspiracy exist when the acts of the accused were caused by their being frightened by the police officers who were allegedly in full battle gear and the fortuitous and unexpected character of the encounter and the rapid turn of events?

A: YES. The rapid turn of events cannot be considered to negate a finding of

conspiracy. Unlike evident premeditation, there is no requirement for conspiracy to exist that there be a sufficient period of time to elapse to afford full opportunity for meditation and reflection. Instead, conspiracy arises on the very moment the plotters agree, expressly or impliedly, to commit the subject felony (*People v. Carandang et al.*, G.R. No. 175926, July 6, 2011).

Q: Can a head of office be held criminally liable as conspirator on the basis of command responsibility?

A: NO. A head or chief of office cannot be held criminally liable as a conspirator simply on the basis of command responsibility. All heads of offices have to rely to a reasonable extent 'on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations. It would be a bad precedent if a head of office plagued by all too common problems – dishonest or negligent subordinates, overwork, multiple assignments or positions, or plain incompetence – is suddenly swept into a conspiracy conviction simply because he did not personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority (*Arias v. Sandiganbayan*, G.R. No. 81563 December 19, 1989).

Proposal

Proposal exists when the person who has decided to commit a felony proposes its execution to some other person or persons.

Requisites:

1. A person has decided to commit a felony;
2. He proposes its execution to other person or persons; and
3. The proposal need not be accepted or else it shall be a conspiracy

Punishment for proposal and conspiracy to commit felony

GR: Conspiracy and proposal to commit a felony are not punishable because they are mere preparatory acts.

XPN: Except in cases in which the law specifically provides a penalty thereof, *i.e.* Treason, rebellion and *coup d'etat*

NOTE: If there is conspiracy to commit Rebellion, and Rebellion is thereafter committed, the accused is liable only for rebellion, the conspiracy now being merely proof of the Rebellion.

Conspiracy vis-à-vis Proposal to commit a felony

BASIS	CONSPIRACY	PROPOSAL
As to its Existence	It exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.	There is proposal when the person who has decided to commit a felony proposes its execution to some other person or persons.
As to its Occurrence	Once the proposal is accepted, a conspiracy arises.	Proposal is true only up to the point where the party to whom the proposal was made has not yet accepted the proposal.
As to the number of parties	Conspiracy is bilateral. It requires two parties.	Proposal is unilateral, one party makes a proposition to the other.

CONTINUED CRIMES

Continued crime or continuous or *delicto cotinuado* (BAR 1996)

It is a single crime, consisting of a series of acts but arising from one criminal resolution.

Here, the offender is impelled by a SINGLE CRIMINAL IMPULSE but committed a series of acts at about the same time in about the same place and all the overt acts violate one and the same provision law. e.g. theft of 13 cows belonging to different owners committed by the accused at the same place and at the same time.

NOTE: A continued crime is NOT a complex crime

Continued crime is different from Transitory crime

Transitory crime, also called, “moving crime” is a concept in criminal procedure to determine the venue. It may be instituted and tried in the court of the municipality, city, it province where any of the essential ingredients thereof took place.

**COMPLEX CRIMES (ART. 48, RPC) AND
COMPOSITE CRIMES
(BAR 2004, 2005, 2007, 2009, 2015)**

Plurality of crimes

It is the successive execution by the same individual of different criminal acts upon any of which no conviction has yet been declared.

Kinds of plurality of crimes

- Formal or ideal**– only one criminal liability
 - Complex crime – defined in Art 48
 - When the law specifically fixes a single penalty for 2 or more offenses committed
 - Continued crimes (BAR 1996)
- Real or material** – there are different crimes in law and in the conscience of the offender. In such cases, the offender shall be punished for each and every offense that he committed

Complex crime

A *complex crime* exists when two or more crimes are committed but they constitute only one crime in the eyes of the law. Here, there is only one criminal intent; hence, only one penalty is imposed.

Kinds of complex crimes

- Compound crime** – when a single act constitutes two or more grave or less grave felonies (Art. 48, RPC).

Requisites:

- Only a single act is performed by the offender
- The single act produces:
 - Two or more grave felonies
 - One or more grave and one or more less grave felonies
 - Two or more less grave felonies.

Q: The single act of A in firing a shot caused the death of two persons, arising from one bullet, who were standing on the line of the direction of the bullet. Is A liable for two separate crimes of homicide?

A: NO, since the deaths of the two victims were a result of one single act of firing a shot, a complex crime was committed.

2. **Complex crime proper**– when an offense is the necessary means for committing the other(*Art. 48, RPC*).

Requisites:

- a. At least two offenses are committed;
- b. One or some of the offenses must be necessary to commit the other; and
- c. Both or all the offenses must be punished under the same statute (RPC).

NOTE: Only one penalty is imposed for complex crimes because there is only one criminal act. Thus, there should only be one information charging a complex crime.

3. **Special complex crime or composite crime** – one in which the substance is made up of more than one crime, but which, in the eyes of the law, is only a single indivisible offense.

Examples of special complex crimes

1. Qualified piracy, when piracy is accompanied by murder, homicide, physical injuries or rape;
2. Rape with homicide;
3. Kidnapping with rape;
4. Kidnapping with homicide;
5. Kidnapping with physical injuries;
6. Robbery with homicide;
7. Robbery with rape;
8. Robbery with physical injuries; and
9. Robbery with arson.

Ordinary complex crime vis-à-vis Special complex crime (BAR 2003)

BASIS	ORDINARY COMPLEX CRIME	SPECIAL COMPLEX CRIME
<i>As to concept</i>	It is made up of two or more crimes being punished under distinct	It is made up of two or more crimes which are considered only as

	provisions of the RPC but alleged in one information either because they were brought about by a single felonious act or because one offense is a necessary means for committing the other offense or offenses.	components of a single indivisible offense being punished in one provision of the RPC.
<i>As to penalties</i>	The penalty for the most serious crime shall be imposed and in its maximum period.	Only one penalty is specifically prescribed for all the component crimes which are regarded as one indivisible offense. The component crimes are not regarded as distinct crimes and so the to be imposed is that specifically provided for under the special complex crime committed.

Instances when there is no complex crime

1. Kidnapping(*Art. 267, RPC*);
2. Occupation of real property or usurpation of real rights in property(*Art. 312, RPC*);
3. Search warrants maliciously obtained(*Art. 129, RPC*) in relation to perjury;
4. When one offense is committed to conceal the other;
5. When one crime is an element of the other, for in that case, the former shall be absorbed by the latter. *e.g.* trespassing which is an element of the robbery with force upon things;
6. When the crime has the same elements as the other crime committed;

Example:

Estafa and falsification of private documents have the same element of damage. Thus, there is no complex crime of *estafa* through falsification of private document.



7. When one of the offenses is penalized by a special law;
8. In continued crimes;
9. Where the intent is really to commit the second crime but the first act although also a crime is incidental to the commission of the crime; and

Example:

When the intent of the offender in taking away a woman is to rape her, the crime would only be simple rape as the abduction would be absorbed as an incident in the commission of rape.

10. Special complex crimes.

NOTE: A light felony CANNOT be complexed with a grave or less grave felony. It is either treated as a separate offense or considered absorbed in the grave or less grave felonies.

NOTE: There can be no complex crime proper if the other crime is punishable by a special law. To be a complex crime proper both crime must be punished under the RPC.

Q: Jason Ivler was involved in a vehicular collision resulting to the injuries of Evangeline Ponce and the death of her husband. He was charged of two offenses: (1) Reckless Imprudence Resulting in Slight Physical Injuries; and (2) Reckless Imprudence Resulting in Homicide and Damage to Property. Can Ivler be convicted with the two offenses? (BAR 2013)

A: NO. Reckless imprudence is a single crime, its consequences on persons and property are material only to determine the penalty. Reckless imprudence under Art. 365 is a single quasi-offense by itself and not merely a means of committing other crimes such that conviction or acquittal of such quasi-offense bars subsequent prosecution for the same quasi-offense, regardless of its various resulting acts (*Ivler v. San Pedro, G.R. No. 172716, November 17, 2010*).

Penalty for complex crimes under Article 48

GR: When a complex crime is committed, the penalty for the most serious crime in its maximum period shall be imposed.

XPN: When the law imposes a single penalty for special complex crime.

Complex crime of *coup d'état* with rebellion (BAR 2003)

There can be a complex crime of *coup d'état* with rebellion if there was conspiracy between the offender/s committing the rebellion. By conspiracy, the crime of one would be the crime of the other and *vice versa*. This is possible because the offender in *coup d'état* may be any person or persons belonging to the military or the national police or a public officer, whereas rebellion does not so require. Moreover, the crime of *coup d'état* may be committed singly, whereas rebellion requires a public uprising and taking up arms to overthrow the duly constituted government. Since the two crimes are essentially different and punished with distinct penalties, there is no legal impediment to the application of Art. 48 of the RPC.

Complex crime of *coup d'etat* with sedition (BAR 2003)

Coup d'état can be complexed with sedition because the two crimes are essentially different and distinctly punished under the Revised Penal Code. Sedition may not be directed against the government or be non-political in objective, whereas *coup d'état* is always political in objective as it is directed against the government and led by persons or public officer holding public office belonging to the military or national police. Art. 48 of the Code may apply under the conditions therein provided.

CIRCUMSTANCES AFFECTING CRIMINAL LIABILITY

Circumstances affecting criminal liability (JEMAA)

1. Justifying circumstances;
2. Exempting circumstances;
3. Mitigating circumstances;
4. Aggravating circumstances; and
5. Alternative circumstances.

Other circumstances found in the RPC affecting criminal liability



1. **Absolutory cause** – has the effect of an exempting circumstance as it is predicated on lack of voluntariness.
2. **Extenuating circumstances** – has the effect of mitigating the criminal liability of the offender.

Example: In the offense of infanticide, concealment of dishonor is an extenuating circumstance insofar as the pregnant woman and the maternal grandparents are concerned. In the offense of abortion under Art. 258, the liability of a pregnant woman will be mitigated if her purpose is to conceal dishonor. (Such circumstance is not available to the parents of the pregnant woman). Also, under Art. 333, if the person guilty of adultery committed the offense while being abandoned without justification, the penalty next lower in degree shall be imposed.

JUSTIFYING CIRCUMSTANCES ART. 11, RPC

Justifying circumstances

They are those acts of a person said to be in accordance with law, such that a person is deemed not to have committed a crime and is therefore free from both criminal and civil liability (see *XPN* for civil liability in the subsequent discussion).

They are:

1. Self-defense;
2. Defense of relatives;
3. Defense of stranger;
4. Avoidance of greater evil or injury;
5. Fulfillment of duty or exercise of right or office;
6. Obedience to an order of a superior.

Burden of proving the existence of justifying circumstances

In cases where the accused interposes justifying circumstance, this prosecutorial burden is shifted to the accused who himself must prove all the indispensable ingredients of such defense (*People v. Roxas*, G.R. No. 218396, February 20, 2016). *El incombir probacion qui decit non qui negat* — He who asserts, not he who denies, must prove.

Basis for these justifying circumstances

The basis for these justifying circumstances is the lack of criminal intent, and with the maxim *actus non facit reum, nisi mens sit rea* (an act does not make the doer guilty, unless the mind is guilty), there is no crime and there is no criminal in the situations contemplated in this article provided the respective elements are all present.

Civil liability in the circumstances mentioned in Art. 11

GR: Since there is no crime, necessarily there is no civil liability *ex delicto*.

XPN: In paragraph 4, wherein civil liability may be adjudged against those who benefited from the act which caused damage to the property of the victim but spared their own properties from consequent damages. The civil liability in Par. 4 is provided for in Art. 101, and is commendably in line with the rule against unjust enrichment.

SELF-DEFENSE ART. 11(1), RPC

Rights included in self-defense

Self-defense includes not only the defense of the person or body of the one assaulted but also that of his rights, the enjoyment of which is protected by law. Thus, it includes:

1. Defense of the person's home;
2. Defense of rights protected by law; and
3. The right to honor;

NOTE: Hence, a slap on the face is considered as unlawful aggression since the face represents a person and his dignity. It is a serious, personal attack (*Rugas v. People*, G.R. No. 147789, January 14, 2004).

4. The defense of property rights can be invoked if there is an attack upon the property although it is not coupled with an attack upon the person of the owner of the premises. All the elements for justification must however be present (*People v. Narvaez*, G.R. Nos. L-33466-67, April 20, 1983); and

NOTE: However, if A snatches the watch of B inside a running passenger jeep, and then B punches A to protect the possession of his watch, and A fell from the running jeep, his head hitting a hard pavement causing his

death, B is not liable criminally for the defense of his property rights, there was no attack against the B's person.

5. Self-defense in libel – Physical assault may be justified when the libel is aimed at the person's good name, and while the libel is in progress, one libel deserves another.

NOTE: What is important is not the duality of the attack but whether the means employed is reasonable to prevent the attack.

Reason for justifying self-defense

It is impossible for the State to protect all its citizens. Also, a person cannot just give up his rights without resistance being offered.

Effects of self-defense

1. *When all the elements are present* – the person defending himself is free from criminal liability and civil liability.
2. *When only a majority of the elements are present* – privileged mitigating circumstance, provided there is unlawful aggression.

Nature of self-defense

The rule consistently adhered to in this jurisdiction is that when the accused's defense is self-defense he thereby admits being the author of the death of the victim, thus it becomes incumbent upon him to prove the justifying circumstance to the satisfaction of the court (*People v. Del Castillo et al.*, G.R. No. 169084, January 18, 2012).

Requisites of self-defense(Bar 1993, 1996, 2002, 2003, 2005)(URL)

1. Unlawful aggression;
2. Reasonable necessity of the means employed to prevent or repel it; and
3. Lack of sufficient provocation on the part of the person defending himself.

No transfer of burden of proof when pleading self-defense

The burden to prove guilt beyond reasonable doubt is not lifted from the shoulders of the State, which carries it until the end of the proceedings. It is the burden of evidence that is shifted to the

accused to satisfactorily establish the fact of self-defense. In other words, only the *onus probandi* shifts to the accused, for self-defense is an affirmative allegation that must be established with certainty by sufficient and satisfactory proof (*People v. Del Castillo et al.*, G.R. No. 169084, January 18, 2012).

But in case of an agreement to fight, self-defense is not feasible as in case of a fight, the parties are considered aggressors as aggression is bound to arise in the course of the fight.

NOTE: Unlawful aggression is an indispensable requisite or condition sine qua non for self-defense to arise

Nature of the unlawful aggression (BAR 1993, 2004)

For unlawful aggression to be appreciated, there must be an "actual, sudden and unexpected attack, or imminent danger thereof, not merely a threatening or intimidating attitude" and the accused must present proof of positively strong act of real aggression (*People v. Sabella y Bragais*, G.R. No. 183092, May 30, 2011; *People v. Campos and Acabo*, G.R. No. 176061, July 4, 2011).

NOTE: There is no unlawful aggression when there was an agreement to fight and the challenge to fight has been accepted. But aggression which is ahead of a stipulated time and place is unlawful.

Elements of unlawful aggression

There are three elements of unlawful aggression:

1. There must be a physical or material attack or assault;
2. The attack or assault must be actual, or, at least, imminent; and
3. The attack or assault must be unlawful (*People v. Mapait*, G.R. No. 172606, November 23, 2011).

Lawful aggression

Lawful aggression means the fulfillment of a duty or the exercise of a right in a more or less violent manner.

Example of lawful aggression

The act of a chief police who used violence by throwing stones at the accused when the latter was running away from him to elude arrest for a

crime committed in his presence, is not unlawful aggression, it appearing that the purpose of the peace officer was to capture the accused and place him under arrest (*People v. Gayrama*, G.R. Nos. L-39270 and L-39271, October 30, 1934).

NOTE: If a public officer exceeded his authority he may become an unlawful aggressor.

Two kinds of unlawful aggression

1. **Actual or material unlawful aggression** which means an attack with physical force or with a weapon, an offensive act that positively determines the intent of the aggressor to cause the injury; and
2. **Imminent unlawful aggression** which is an attack that is impending or at the point of happening; it must not consist in a mere threatening attitude (*People v. Mapait*, G.R. No. 172606, November 23, 2011).

Kind of threat that will amount to unlawful aggression

In case of threat, it must be offensive and strong, positively showing the wrongful intent to cause injury. It presupposes actual, sudden, unexpected or imminent danger—not merely threatening and intimidating action. It is present only when the one attacked faces real and immediate threat to one's life (*People v. Maningding*, G.R. No. 195665, September 14, 2011 reiterating *People v. Gabrino* and *People v. Manulit*).

Test for unlawful aggression in self-defense

The test for the presence of unlawful aggression under the circumstances is whether the aggression from the victim put in real peril the life or personal safety of the person defending himself (*People v. Mapait*, *ibid.*).

Effect if there was a mistake of fact on the part of the accused

In relation to mistake of fact, the belief of the accused may be considered in determining the existence of unlawful aggression.

Example: There is self-defense even if the aggressor used a toy gun provided that the accused believed it to be a real gun.

Person who employed the unlawful aggression

In order to constitute an element of self-defense, the unlawful aggression must come, directly or indirectly, from the person who was subsequently attacked by the accused (*People v. Gutierrez*, G.R. No. 31010, September 26, 1929).

Q: A claims that the death of B was an accident and his act was just for self-defense when his revolver accidentally hit the victim while he was struggling the same with his real enemy, C. Is his contention correct?

A: NO. In this case, A was not repelling any unlawful aggression from B, thereby rendering his plea of self-defense unwarranted. His act amounted to *aberratio ictus* (*Matic v. People*, G.R. No. 180219, November 23, 2011).

Requisites to satisfy the “reasonable necessity of the means employed to prevent or repel it”

1. Nature and quality of the weapon used by the aggressor;
2. Physical condition, character, size and other circumstances of both the offender and defender; and
3. Place and occasion of the assault.

NOTE: Perfect equality between the weapons used by the one defending himself and that of the aggressor is not required. What the law requires is rational equivalence.

Doctrine of Rational Equivalence

The reasonable necessity of the means employed does not imply material commensurability between the means of attack and defense. What the law requires is rational equivalence, in the consideration of which will enter the principal factors the emergency, the imminent danger to which the person attacked is exposed, and the instinct, more than the reason, that moves or impels the defense, and the proportionateness thereof does not depend upon the harm done, but rests upon the imminent danger of such injury. (*Espinosa v. People*, G.R. No. 181071, March 15, 2010)

Factors taken into consideration in determining the reasonableness of means employed by the person defending himself

1. Means were used to prevent or repel;



2. Means must be necessary and there is no other way to prevent or repel it; and
3. Means must be reasonable – depending on the circumstances, but generally proportionate to the force of the aggressor.

Instances when there can be lack of sufficient provocation on the person defending himself

1. No provocation at all was given to aggressor by the person defending himself;
2. Even if provocation was given, it was not sufficient;
3. Even if provocation was sufficient, it was not given by the person defending himself;
4. Even if provocation was given by the person defending himself, it was not the proximate and immediate to the act of aggression; and
5. Sufficient means proportionate to the damage caused by the act, and adequate to stir one to its commission.

Lack of the sufficient provocation

Sufficient provocation should not come from the person defending himself, and it must immediately precede the aggression.

Control of blows of person defending himself

The person defending himself cannot be expected to think clearly so as to control his blow. The killing of the unlawful aggressor may still be justified as long as the mortal wounds are inflicted at a time when the elements of complete self-defense are still present.

Q: A, unlawfully attacked B with a knife. B then took out his gun which caused A to run away. B, after treating his wounds, pursued A and shot him. Can B invoke self-defense?

A: No. The unlawful aggression which has begun no longer exists. When the aggressor runs away, the one making a defense has no more right to kill or even to wound the former aggressor. In order to justify homicide on the ground of self-defense, it is essential that the killing of the deceased by the defendant be simultaneous with the attack made by the deceased, or at least both acts succeeded each other without appreciable interval of time.

NOTE: The aggression ceases except when retreat is made to take a more advantageous position to

insure the success of the attack which has begun, as unlawful aggression still continues.

Q: One night, Lina, a young married woman, was sound asleep in her bedroom when she felt a man on top of her. Thinking it was her husband Tito, who came home a day early from his business trip, Lina let him have sex with her. After the act, the man said, "I hope you enjoyed it as much as I did." Not recognizing the voice, it dawned upon Lina that the man was not Tito, her husband. Furious, Lina took out Tito's gun and shot the man. Charged with homicide, Lina denies culpability on the ground of defense of honor. Is her claim tenable? (BAR 1998, 2000)

A: NO, Lina's claim that she acted in defense of honor is not tenable because the unlawful aggression on her honor had already ceased. Defense of honor as included in self-defense, must have been done to prevent or repel an unlawful aggression. There is no defense to speak of where the unlawful aggression no longer exists.

Q: Gain, Mercado, Rey and Manzo were strolling at the Municipal Park, when they were blocked by four (4) persons, namely Lalog, Concepcion, Ramirez and Litada. Mercado was walking ahead of Gain. When he looked back, he saw Gain being ganged upon by the group of the accused-appellants held both the hands of Gain, while Lalog stabbed Gain. Lalog admitted stabbing Gain in self-defense. Will his defense lie? If yes, why? If not, what crime can he be convicted of?

A: Lalog's defense will not lie. To avail of self-defense as a justifying circumstance so as not to incur any criminal liability, it must be proved with certainty by satisfactory and convincing evidence which excludes any vestige of criminal aggression on the part of the person invoking it. The testimony of prosecution witness Mercado that Gain was stabbed at his back by Lalog while both his hands were being held by the other appellants is more logical, believable and in consonance with the physical evidence. Furthermore, the number of wounds sustained by Gain is indicative of Lalog's desire to kill the former and not really defend himself because not a single moment of the incident was his life and limb being endangered which is the essence of self-defense.

The crime committed was murder as treachery is present in this case. (G.R. No. 196753, April 21, 2014)

Self-defense vis-à-vis Retaliation

SELF-DEFENSE	RETALIATION
In self-defense, the unlawful aggression still existed when the aggressor was injured or disabled by the person making the defense.	In retaliation, the inceptual unlawful aggression had already ceased when the accused attacked him.

Stand ground when in the right doctrine

A rule which does not require a person who is where he has a right to be, to retreat in the face of a rapidly advancing attacker threatening him with a deadly weapon, but entitles him to do whatever he believes is necessary to protect himself from great bodily harm. (*US v. Domen*, G.R. No. L-12963, October 25, 1917)

NOTE: Stand ground when in the right doctrine is the rule followed in the Philippines as opposed to the retreat to the wall doctrine.

Retreat to the wall doctrine

This doctrine makes it the duty of a person assailed to retreat as far as he can before he is justified in meeting force with force. (*US v. Domen*, G.R. No. L-12963, October 25, 1917)

ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004 (RA 9262)

Battered woman

A woman, who is repeatedly subjected to any forceful physical or psychological behavior by a man in order to coerce her to do something he wants her to do without any concern for her rights.

NOTE: In order to be classified as a battered woman, the couple must go through the battering cycle at least twice. Any woman may find herself in an abusive relationship with a man once. If it occurs a second time, and she remains in the situation, she is defined as a battered woman

(*People v. Genosa*, G.R. No. 135981, January 15, 2004).

BATTERED WOMAN SYNDROME

"Battered Woman Syndrome" (BWS)

(see further discussion on Special Penal Laws part)

It refers to a scientifically defined pattern of psychological and behavioral symptoms found in women living in battering relationships as a result of cumulative abuse [RA 9262, Sec. 3(c)].

Battery

It is any act of inflicting physical harm upon the woman or her child resulting to physical, psychological or emotional distress [RA 9262, Sec. 3(b)].

The battered woman syndrome is characterized by the so-called cycle of violence, which has 3 phases:

1. Tension building phase;
2. Acute battering incident; and
3. Tranquil, loving (or at least non-violent) phase.

NOTE: The defense should prove all three (3) phases of cycle of violence characterizing the relationship of the parties (*People v. Genosa*, *ibid.*).

BWS used as a defense (BAR 2014, 2015)

Victim-survivors who are found by the courts to be suffering from battered woman syndrome do not incur any criminal or civil liability notwithstanding the absence of any of the elements for justifying circumstances of self-defense under the RPC (RA 9262, Sec. 26).

In layman's terms, if an abused woman kills or inflicts physical injuries on her abusive husband or live-in partner, and the trial court determines that she is suffering from "Battered Woman Syndrome," the court will declare her not guilty (*People v. Genosa*, *ibid.*).

The law now allows the battered woman syndrome as a valid defense in the crime of parricide independent of self-defense under the RPC (RA 9262, Sec. 26).



In the determination of the state of mind of the woman who was suffering from battered woman syndrome at the time of the commission of the crime, the courts shall be assisted by expert psychiatrists/ psychologists (*RA 9262, Sec. 26*).

NOTE: Only a certified psychologist or psychiatrist can prove the existence of a Battered Woman Syndrome in a woman.

Women who can avail of BWS as a defense

1. Wife;
2. Former wife;
3. A woman with whom the person has or had a sexual or dating relationship;

NOTE: The “dating relationship” that the law contemplates can exist even without a sexual intercourse taking place between those involved.

4. A woman with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode.

**DEFENSE OF RELATIVES
ART. 11(2)**

Requisites of defense of relatives

1. Unlawful aggression;
2. Reasonable necessity of the means employed to prevent or repel it; and
3. In case the provocation was given by the person attacked, the one making a defense had no part therein.

Meaning of third requisite

There is still a legitimate defense even if the relative being defended has given provocation

Relatives covered under the justifying circumstance

1. Spouse;
2. Ascendants;
3. Descendants;
4. Legitimate, adopted brothers and sisters, or relatives by affinity in the same degrees (namely: ascendants-in-law, descendants-in-law, and siblings-in-law); and
5. Relatives by consanguinity within the 4th civil degree.

NOTE: If the degree of consanguinity or affinity is beyond the fourth degree, it will be considered defense of a stranger.

NOTE: Death of one spouse does not terminate the relationship by affinity established between the surviving spouse and the blood relatives of the deceased (*Intestate Estate of Manolita Gonzales Vda. De Carungcong v. People, G.R. No. 181409, February 11, 2010*).

NOTE: Motive is relative in this kind of defense.

**DEFENSE OF A STRANGER
ART. 11(3)**

Requisites of defense of stranger

1. Unlawful aggression;
2. Reasonable necessity of the means employed to prevent or repel it; and
3. The person defending be not induced by revenge, resentment, or other evil motive.

Who are deemed strangers?

Any person not included in the enumeration of relatives mentioned in par. 2 Art 11 of RPC

**AVOIDANCE OF GREATER EVIL OR STATE OF
NECESSITY
ART. 11(4), RPC**

Requisites of state of necessity (BAR 1990)

1. Evil sought to be avoided actually exists;
2. Injury feared be greater than that done to avoid it;
3. There be no other practical and less harmful means of preventing it; and
4. There must be no contribution on the part of the accused what caused the evil to arise.

NOTE: The state of necessity must not have been brought about by the negligence or imprudence by the one invoking the justifying circumstances. (**BAR 1998, 2004**)

Doctrine of Self-help

The owner or lawful possessor of a thing has the right to exclude any person from the enjoyment and disposal thereof” (Art. 429, New Civil Code). For this purpose, he may use such force as maybe reasonably necessary to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property.

“Damage to another”

Damage to another covers injury to persons and damage to property.

“Evil”

The term “evil” means harmful, injurious, disastrous, and destructive. As contemplated, it must actually exist. If it is merely expected or anticipated, the one acting by such notion is not in a state of necessity.

Person incurring benefit is civilly liable

The persons for whose benefit the harm has been prevented shall be civilly liable in proportion to the benefit which they received.

NOTE: The civil liability referred to herein is based not on the act committed but on the benefit derived from the state of necessity. So the accused will not be civilly liable if he did not receive any benefit out of the state of necessity. Persons who did not participate in the damage would be civilly liable if they derived benefit out of the state of necessity.

State of Necessity vis-à-vis Accident

Art. 11, par.4	Art. 12, par.4
Offender deliberately caused damage	Offender accidentally caused damage

**FULFILLMENT OF DUTY
ART. 11(5), RPC**

Requisites of fulfillment of duty

1. Accused acted in the performance of a duty or in the lawful exercise of a right or office; and
2. Injury caused or offense committed be the necessary consequence of the due performance of duty or the lawful exercise of such right or office.

Q: Lucrecia was robbed of her bracelet in her home. The following day, Lucrecia, while in her store, noticed her bracelet wound around the right arm of Jun-Jun. As soon as the latter left, Lucrecia went to a nearby police station and sought the help of Pat. Willie Reyes. He went with Lucrecia to the house of Jun-Jun to

confront the latter. Pat. Reyes introduced himself as a policeman and tried to get hold of Jun-Jun who resisted and ran away. Pat. Reyes chased him and fired two warning shots in the air but Jun-Jun continued to run. Pat. Reyes shot him in the right leg. Jun-Jun was hit and he fell down but he crawled towards a fence, intending to pass through an opening underneath. When Pat. Reyes was about 5 meters away, he fired another shot at Jun-Jun hitting him at the right lower hip. Pat. Reyes brought Jun-Jun to the hospital, but because of profuse bleeding, he eventually died. Pat. Reyes was subsequently charged with homicide. During the trial, Pat. Reyes raised the defense, by way of exoneration, that he acted in the fulfillment of a duty. Is the defense tenable?

A: NO. The defense of having acted in the fulfillment of a duty requires as a condition, *inter alia*, that the injury or offense committed be the unavoidable or necessary consequence of the due performance of the duty (*People v. Oanis, G.R. No. L-47722, July 27, 1943*). It is not enough that the accused acted in fulfillment of a duty. After Jun-Jun was shot in the right leg and was already crawling, there was no need for Pat Reyes to shoot him any further. Clearly, Pat. Reyes acted beyond the call of duty, which brought about the cause of death of the victim (**BAR 2000**).

**OBEDIENCE TO AN ORDER ISSUED FOR SOME
LAWFUL PURPOSE
ART. 11(6), RPC**

Requisites of obedience to an order issued for some lawful purpose

1. An order has been issued by a superior;
2. Such order must be for some lawful purpose; and
3. Means used by the subordinate to carry out said order is lawful.

NOTE: Both the person who gave the order, and the person who executed it, must be acting within the limitations prescribed by law.

The application of the law is not limited to orders made by public officers to inferior public officials. Thus, a driver of an escaping prisoner who did not know that his employer is leaving the prison compound, as he used to drive for him to go to his



office in previous incidents in order to escape, cannot be held criminally liable.

Materiality of good faith on the part of the subordinate

If he obeyed an order in good faith, not being aware of its illegality, he is not liable. However, the order must not be patently illegal. If the order is patently illegal, this circumstance cannot be validly invoked.

NOTE: Even if the order is patently illegal, the subordinate may still be able to invoke an exempting circumstance: (1) having acted upon the compulsion of an irresistible force, or (2) under the impulse of an uncontrollable fear.

Q: Mayor Adalin was transferred from the provincial jail of Eastern Samar to the residence of Governor Ambil upon the issuance of the order granting the jail warden of such actions. Gov. Ambil tried to justify the transfer by stating that it was caused by the imminent threats upon Mayor Adalin. Sandiganbayan convicted the jail warden and Gov. Ambil guilty for violating Sec 3(e) of RA 3019. May the governor's actions be justified on the ground that he merely acted in the fulfillment of his duty? May the actions of the jail warden be justified as he was merely following orders from the governor?

A: NO. A governor of a province has no power to order the transfer of a detention prisoner. Nor can the provincial jail warden follow such an unlawful order. Thus, neither of them can invoke the justifying circumstance of lawful exercise of office or obedience to a lawful order (*Ambil v. Sandiganbayan, G.R. No. 175457, July 6, 2011*).

**EXEMPTING CIRCUMSTANCES
ART. 12, RPC**

What are Exempting circumstances (non-imputability)?

These are grounds for exemption from punishment because there is wanting in the agent of the crime any of the conditions which make the act voluntary or negligent (*Reyes, 2017*).

GR: No criminal liability, but there is civil liability
XPN: Par. 4 and Par. 7: exempted from both criminal and civil liability

The following are exempted from criminal liability(IF-SAC-IF)

1. An **imbecile** or an insane person, unless the latter has acted during a lucid interval;
2. A child **fifteen** years of age or under is exempt from criminal liability under RA 9344; (**BAR 1998**)
3. A person who is **sixteen to seventeen** years old, unless he has acted with discernment, in which case, such child shall be subject to appropriate proceedings in accordance with RA 9344; (**BAR 2000**)
4. Any person who, while performing a lawful act with due care, causes an injury by mere **accident** without the fault or intention of causing it; (**BAR 1992, 2000**)
5. Any person who acts under the **compulsion** of an irresistible force;
6. Any person who acts under the **impulse** of an uncontrollable fear of an equal or greater injury; and
7. Any person who **fails** to perform an act required by law, when prevented by some lawful or insuperable cause (**BAR 1994**).

Basis for the exemption from criminal liability

EXEMPTING CIRCUMSTANCE	BASIS
Insanity/Imbecility.	Lack of intelligence.
Minority.	Lack of intelligence.
Accident without fault or intention of causing it.	Lack of criminal intent.
Compulsion of irresistible force.	Lack of freedom.
Uncontrollable fear.	Lack of freedom.
Prevented by some lawful or insuperable cause.	Lack of criminal intent.

Q: In case of exempting circumstances, is there a crime committed?

A: YES. There is a crime committed but no criminal liability arises from it because of the complete absence of any of the conditions which constitute free will or voluntariness of the act.

Justifying circumstances vis-à-vis Exempting circumstances (BAR 2002)

BASIS	JUSTIFYING CIRCUMSTANCE	EXEMPTING CIRCUMSTANCE
<i>As to its effect</i>	The circumstance affects the act, not the actor.	The circumstances affect the actor.
<i>As to existence of a crime</i>	The act complained of is considered to have been done within the bounds of law; hence, it deemed as if no crime is committed.	Since the act complained of is actually wrong, there is a crime. But because the actor acted without voluntariness, there is absence of <i>dolo</i> or <i>culpa</i> . Hence, there is no criminal.
<i>As to liability</i>	Since there is no crime or criminal, there is no criminal liability as well as civil liability.	GR: there is civil liability for the wrong done. XPN: in paragraphs 4 and 7 of Article 12, there is neither criminal nor civil liability.

**IMBECILITY AND INSANITY
ART. 12(1), RPC**

Imbecility vis-à-vis Insanity

BASIS	IMBECILITY	INSANITY
<i>Definition</i>	An imbecile is one who, while advanced in age, has a mental development comparable to that of children between two to seven years of age.	Insanity exists when there is a complete deprivation of intelligence in committing the act.
<i>Existence of Lucid Interval</i>	No lucid interval.	There is lucid interval.
<i>Exemption from criminal liability</i>	Exempt from criminal liability in all cases.	Not exempt from criminal liability if it can be shown that he acted during a lucid interval.

Tests for exemption on grounds of insanity

1. **Test of cognition** – whether the accused acted with complete deprivation of intelligence in committing said crime.
2. **Test of volition** – whether the accused acted in total deprivation of freedom of will.

NOTE: Test of cognition is followed in the Philippines. Caselaw shows common reliance on the test of cognition, rather than on a test relating to "freedom of the will;" examination of our caselaw has failed to turn up any case where this Court has exempted an accused on the sole ground that he was totally deprived of "freedom of the will," i.e., without an accompanying "complete deprivation of intelligence." This is perhaps to be expected since a person's volition naturally reaches out only towards that which is presented as desirable by his intelligence, whether that intelligence be diseased or healthy. In any case, where the accused failed to show complete impairment or loss of intelligence, the Court has recognized at most a mitigating, not an exempting, circumstance in accord with Article 13(9) of the Revised Penal Code: "Such illness of the offender as would diminish the exercise of the will-power of the offender without however depriving him of the consciousness of his acts." (*People v. Rafanan*, G.R. No. L-54135, November 21, 1991)

Presumption is in favor of sanity

The defense must prove that the accused was insane at the time of the commission of the crime.

NOTE: Mere abnormalities of the mental facilities are not enough.

Q: Rosalino stabbed Mrs. Sigua to death in her office. During trial, he pleaded insanity and presented several witnesses, including doctors from the National Mental Hospital, who all said that he was suffering from organic mental disorder secondary to cerebro-vascular accident or stroke. It appears that he was working in Lebanon a few years back, and in Riyadh a few months after. While he was in Riyadh, he suffered a stroke. According to the doctors, this event triggered the mental disability since when he returned to the Philippines, his attitude had changed considerably. The prosecution claimed that during the commission of the crime, it was a lucid interval for Rosalino because when he



was being treated in the mental hospital, he was shouting that he killed Mrs. Sigua. Can defense of insanity be appreciated?

A: NO. Insanity in our law exists when there is a complete deprivation of intelligence. The statement of one of the witnesses that the accused knew the nature of what he had done makes it highly doubtful that he was insane when he committed the act charged. Generally, in criminal cases, every doubt is resolved in favor of the accused. But in the defense of insanity, doubt as to the fact of insanity should be resolved in favor of sanity. The burden of proving the affirmative allegation of insanity rests on the defense. The quantum of evidence required to overthrow the presumption of sanity is proof beyond reasonable doubt. Insanity is a defense in a confession and avoidance and as such must be proved beyond reasonable doubt. Insanity must be clearly and satisfactorily proved in order to acquit the accused. In this case, Rosalino has not successfully discharged the burden of overcoming the presumption that he committed the crime as charged freely, knowingly, and intelligently (*People v. Dungo*, G.R. No 89420, July 31, 1991).

Appreciation of insanity as an exempting circumstance

Insanity presupposes that the accused was completely deprived of reason or discernment and freedom of will at the time of the commission of the crime. Only when there is a complete deprivation of intelligence at the time of the commission of the crime should the exempting circumstance of insanity be considered (*People v. Bulagao*, G.R. No. 184757, October 5, 2011).

Q: Verdadero, the accused in this case, repeatedly stabbed Romeo, the victim with a Rambo knife. He was successfully detained by the police officers. Accused testified that he is insane during the commission of the crime and that he is clinically diagnosed as a schizophrenic that relapses often in the recent years prior to the incident that happened. Is he liable for homicide?

A: NO. The accused was able to interpose the defense of insanity which requires that the person be completely deprived of intelligence due to the mental condition or ailment and that such deprivation manifest itself during the commission of the crime. He is clinically diagnosed as a

schizophrenic, and that in the recent years and immediately before the incident, it was apparent that he was not in the right state of mind since his eyes were bloodshot and not acting accordingly (*Verdadero v. People*, G.R. No. 216021, March 2, 2016).

Effects of insanity of the accused

1. *At the time of the commission of the crime* – exempted
2. *During trial* – proceedings suspended until the mental capacity of the accused is restored to afford him fair trial. Accused is then committed to a hospital.
3. *After judgment or while serving sentence* – execution of judgment is suspended and the accused will be committed to a hospital. The period of confinement in the hospital is counted for the purpose of the prescription of the penalty.

Other instances of insanity

1. *Dementia praecox (Schizophrenia)* is covered by the term insanity because homicidal attack is common in such form of psychosis. It is characterized by delusions that he is being interfered with sexually, or that his property is being taken, thus the person has no control over his acts (*People v. Bonoan*, G.R. No. L-45130, February 17, 1937).
2. *Kleptomania* or presence of abnormal, persistent impulse or tendency to steal, to be considered exempting will still have to be investigated by competent psychiatrist to determine if the unlawful act is due to irresistible impulse produced by his mental defect, thus loss of willpower. If such mental defect only diminishes the exercise of his willpower and did not deprive him of the consciousness of his acts, it is only mitigating.
3. *Epilepsy* which is chronic nervous disease characterized by compulsive motions of the muscles and loss of consciousness may be covered by the term insanity.
4. The SC considered the following as included in the term “insanity”: lack of controlled consciousness, such as while dreaming (*People v. Taneo*, G.R. No. L-37673, March 31,

1933), and somnambulism or sleep-walking (*People v. Mancao*, G.R. No. 26361, January 20, 1927).

NOTE: Feeble-mindedness is not exempting because the offender could distinguish right from wrong. An imbecile or an insane cannot distinguish right from wrong (*People v. Formigones*, G.R. No. L-3246, November 29, 1950).

**MINORITY
ART. 12(2 and 3), RPC
as amended by RA 9344, as further amended
by RA 10630**

Discernment

Discernment is the mental capacity to understand the difference between right and wrong including the capacity to fully appreciate the consequences of his unlawful act. Such capacity may be known and should be determined by taking into consideration all the facts and circumstances afforded by the records in each case, the manner the crime was committed, and the conduct of the offender after its commission (*People v. Doqueña*, G.R. No 46539, September 27, 1939).

Intent vis-à-vis Discernment

INTENT	DISCERNMENT
The determination to do a certain thing, an aim or purpose of the mind. It is the design to resolve or determination by which a person acts.	The mental capacity to tell right from wrong. It relates to the moral significance that a person ascribes to his act and relates to the intelligence as an element of <i>dolo</i> .

NOTE: Discernment is manifested through manner of committing the crime and conduct of the offender.

**MINIMUM AGE OF CRIMINAL RESPONSIBILITY
AND TREATMENT OF CHILD BELOW THE AGE
OF RESPONSIBILITY
(RA 9344, as amended by RA 10630)**

AGE BRACKET	CRIMINAL LIABILITY	TREATMENT
15 years old or below.	Exempt.	The child shall be subjected to a community-based intervention

		program.
16-17 years old, who acted without discernment.	Exempt.	The child shall be subjected to a community-based intervention program.
16-17 years old, who acted with discernment.	Not exempt.	Such child shall be subjected to a diversion program.

NOTE: The exemption from criminal liability in the cases specified above does not include exemption from civil liability, which shall be enforced in accordance with existing laws (RA 9344, as amended by RA 10630, Sec. 6).

**ACCIDENT WITHOUT FAULT OR INTENTION OF
CAUSING IT
ART. 12(4), RPC**

Conditions necessary to exempt a person from liability under subsection 4 of Article 12 of RPC

1. That the act causing the injury be lawful; that is, permitted not only by law but also by regulations;
2. That it be performed with due care;
3. That the injury be caused by mere accident, e.g., by an unforeseen event; and
4. That there be no fault or intention to cause the injury.

NOTE: If not all the conditions necessary to exempt from liability, the act should be considered as (Art.365):

- a. **Reckless imprudence**, if the act is executed without taking those precautions of measures which the most common prudence would require; or
- b. **Simple imprudence**, if it is a mere lack of precaution in those cases where either the threatened harm is not imminent or the danger is not openly visible.

Accident

An accident is something that happens outside the sway of our will, and although it comes about through some act of our will, lies beyond the bounds of humanly foreseeable consequences. It



presupposes a lack of intention to commit the wrong done.

Damnum absque injuria

This exempting circumstance is based on the lack of negligence and intent. Under this paragraph, the person does not commit either an intentional or culpable felony.

Exemption from criminal and civil liability

The infliction of the injury by mere accident does not give rise to a criminal or civil liability, but the person who caused the injury is duty bound to attend to the person who was injured.

Illustration: A chauffeur, while driving his automobile on the proper side of the road at a moderate speed and with due diligence, suddenly and unexpectedly saw a man in front of his vehicle coming from the sidewalk and crossing the street without any warning that he would do so. Because it was not physically possible to avoid hitting him, the said chauffeur ran over the man with his car. It was held that he was not criminally liable, it being a mere accident (*U.S. v. Tayongtong*, G.R. No.6897, February 15, 1912).

Q: A and B are both security guards. A turned-over to B a service firearm who held it with both hands, with the muzzle pointed at A and the butt towards B. At that moment, B held opposite the muzzle of the gun where the trigger is, and almost slip with it while in the act of gripping and then immediately the gun went off and accidentally shot A. A was able to recover from the shot. B was then charged with frustrated homicide. Can B raise the defense of accident to mitigate his liability?

A: NO. It is axiomatic that a person who invokes accident must prove that he acted with due care. This was belied by the conduct of the accused when he allegedly received the shotgun from the private complainant. As he himself admitted, he received the shotgun by placing his pointer finger, also known as the trigger finger because it is used to squeeze the trigger, inside the trigger guard and over the trigger itself. Worse, he did so while the barrel of the gun was pointed at the private complainant. According to him, he knew that it was not proper for a person to receive a firearm from another by immediately inserting a finger inside the trigger guard. Likewise, he knew that the hand-over of a

firearm with its barrel pointed towards the giver or any other person was not proper. That he did these improper acts despite his training and experience as a security guard undermines any notion that he had acted with due care during the subject incident (*People v. Lanuza y Bagaoisan*, G.R. No. 188562, August 17, 2011).

**COMPULSION OF IRRESISTIBLE FORCE
ART. 12(5), RPC**

The basis of exemption is the complete absence of freedom, an element of voluntariness.

Irresistible Force

It is a degree of force which is external or physical which reduces the person to a mere instrument and the acts produced are done without and against his will.

Requisites of compulsion of irresistible force

1. Compulsion is by means of physical force;
2. Physical force must be irresistible; and
3. Physical force must come from a third person.

Nature of physical force required by par. 5

The force must be irresistible to reduce the actor to a mere instrument who acts not only without will but against his will. The duress, force, fear or intimidation must be present, imminent and impending and of such a nature as to induce a well-grounded apprehension of death or serious bodily harm if the act is done. A threat of future injury is not enough. The compulsion must be of such a character as to leave no opportunity to the accused for escape or self-defense in equal combat (*People of the Philippines v. Loreno*, G.R. No. L-54414, July 9, 1984).

Q: Baculi, who was not a member of the band which murdered some American school teachers, was in a plantation gathering bananas. Upon hearing the shooting, he ran. However, Baculi was seen by the leaders of the band who called him, and striking him with the butts of their guns, they compelled him to bury the bodies. Is he liable as an accessory to the crime of murder?

A: NO. Baculi is not criminally liable as accessory for concealing the body of the crime of murder committed by the band because he acted under

the compulsion of an irresistible force (*U.S. v. Caballeros, G.R. No. 1352, March 29, 1905*).

Q: Rogelio Delos Reyes—along with Roderick Licayan and Roberto Lara—were charged with the crime of Kidnapping for Ransom. In his defense, Delos Reyes argued that he was merely passing by at the crime scene when one of the co-accused pointed a gun at him and forced him to guard the victims, hence he is entitled to the exempting circumstance of compulsion due to irresistible force. Is the exempting circumstance of compulsion due to irresistible force present?

A: NO. A person invoking the exempting circumstance of compulsion due to irresistible force admits in effect the commission of a punishable act which must show that the irresistible force reduced him to a mere instrument that acted not only without will but also against his will. The duress, force, fear or intimidation must be present, imminent and impending; and it must be of such a nature as to induce a well-grounded apprehension of death or serious bodily harm if the act is not done. It is hard to believe that a person who accidentally discovers kidnap victims would be held at gunpoint by the kidnappers to guard said victims (*People v. Licayan, et al., G.R. No. 203961, July 29, 2015*).

**UNCONTROLLABLE FEAR
ART. 12(6), RPC**

Requisites

1. Threat, which causes the fear, is of an evil greater than or at least equal to that which he is required to commit; and
2. It promises an evil of such gravity and imminence that the ordinary man would have succumbed to it.

Elements of uncontrollable fear

1. Existence of an uncontrollable fear;
2. Fear must be real and imminent; and
3. Fear of an injury is greater than or equal to that committed.

NOTE: A threat of future injury is not enough. The compulsion must be of such character as to leave no opportunity to the accused for escape or self-defense in equal combat.

In case of uncontrollable fear, it is necessary that the threat that caused the uncontrollable fear on the offender must be present, clear and personal. It must not only be/merely an imagined threat or court interfered threat.

Irresistible force vis-à-vis uncontrollable fear

IRRESISTIBLE FORCE	UNCONTROLLABLE FEAR
A person is compelled by another to commit a crime by means of violence or physical force.	A person is compelled by another to commit a crime by means of intimidation or threat.
The irresistible force must have been made to operate directly upon the person of the accused and the injury feared may be of a lesser degree than the damage caused by the accused.	The uncontrollable fear may be generated by a threatened act directed to a third person such as the wife of the accused who was kidnapped, but the evil feared must be greater or at least equal to the damage caused to avoid it.

The person who used the force or created the fear is criminally and primarily civilly liable, but the accused who performed the act involuntarily and under duress is still secondarily civilly liable (*RPC, Art. 101*).

Q: The evidence on record shows that at the time the ransom money was to be delivered, appellants Arturo Malit and Fernando Morales, unaccompanied by any of the other accused, entered the van wherein Feliciano Tan was. At that time, Narciso Saldaña, Elmer Esguerra and Romeo Bautista were waiting for both appellants from a distance of about one kilometer. Both appellants raise the defense of uncontrollable fear. Is their contention tenable?

A: By not availing of this chance to escape, appellants' allegation of fear or duress becomes untenable. It was held that in order that the circumstance of uncontrollable fear may apply, it is necessary that the compulsion be of such a character as to leave no opportunity for escape or self-defense in equal combat. Moreover, the reason for their entry to the van could be taken as their way of keeping Feliciano Tan under further



surveillance at a most critical time (*People v. Saldana, G.R. No. 148518, April 15, 2004*).

**PREVENTED BY SOME LAWFUL OR
INSUPERABLE CAUSE
ART. 12(7), RPC**

Basis of this exempting circumstance

The basis is absence of intent.

Insuperable cause

Some motive which has lawfully, morally, or physically prevented a person to do what the law commands.

Requisites under this exempting circumstance

1. An act is required by law to be done;
2. A person fails to perform such act; and
3. Failure to perform such act was due to some lawful or insuperable cause.

NOTE: It applies to felonies by omission.

**MITIGATING CIRCUMSTANCES
ART. 13, RPC**

Mitigating Circumstances

Mitigating circumstances are those which, if present in the commission of the crime, do not entirely free the actor from criminal liability but serve only to reduce the penalty.

One single act cannot be made the basis of more than one mitigating circumstance. Hence, a mitigating circumstance arising from a single act absorbs all the other mitigating circumstances arising from the same act.

Basis of mitigating circumstances

The basis is diminution of either freedom of action, intelligence, or intent or on the lesser perversity of the offender.

NOTE: It is not considered in art. 365.

Circumstances which can mitigate criminal liability

1. Incomplete justifying or exempting circumstance(Privileged Mitigating circumstance); (**BAR 1990, 1996**)

2. The offender is under 18 or over 70 years old;
3. No intention to commit so grave a wrong (*praeter intentionem*); (**BAR 2000, 2001**)
4. Sufficient threat or provocation;
5. Vindication of a grave offense; (**BAR 1993, 2000, 2003**)
6. Passion or obfuscation;
7. Voluntary surrender; (**BAR 1992, 1996, 1997, 1999**)
8. Physical defect;
9. Illness of the offender;
10. Similar and analogous circumstances; and
11. Humanitarian reasons (*Jarillo v. People, G.R. No. 164435, September 29, 2009*).

NOTE: Mitigating circumstances must be present prior to or simultaneously with the commission of the offense, except voluntary surrender or confession of guilt by the accused (*RPC, ART. 13, Par. 7*).

Effects of mitigating circumstances in the nature of the crime

They reduce the penalty but do not change the nature of the crime.

Classes of mitigating circumstances

1. Ordinary mitigating; and
2. Privileged mitigating.

Ordinary mitigating vis-à-vis Privileged mitigating

ORDINARY MITIGATING	PRIVILEGED MITIGATING
Can be offset by aggravating circumstances.	Can never be offset by any aggravating circumstance.
Ordinary mitigating circumstances, if not offset, will operate to reduce the penalty to the minimum period, provided the penalty is a divisible one.	Privileged mitigating circumstances operate to reduce the penalty by one to two degrees, depending upon what the law provides.

Privileged mitigating circumstances under the RPC

1. When the offender is a minor under 18 years of age (*RPC, Art. 68*); (**BAR 2013, 2014**)

2. When the crime committed is not wholly excusable (*RPC, Art. 69*);
3. When there are two or more mitigating circumstances and no aggravating circumstance, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according the number and nature of such circumstances (*RPC, Art. 64, par. 5*); (**BAR 1997**)
4. Voluntary release of the person illegally detained within 3 days without the offender attaining his purpose and before the institution of the criminal action (*RPC, Art. 268, par. 3*);
5. Abandonment without justification by the offended spouse in case of adultery (*RPC, Art. 333, par. 3*); and
6. Concealing dishonor in case of infanticide (*RPC, Art. 255, par. 2*).

NOTE: If it is the maternal grandparent who committed the offense to conceal dishonor, the penalty imposed is one degree lower. If it is the pregnant woman who committed the offense to conceal dishonor, the penalty imposed is two degrees lower. In case of concealing dishonor by a pregnant woman in abortion, the impossible penalty is merely lowered by period and not by degree, hence, not a privileged mitigating circumstance.

Privileged mitigating circumstances contemplated under Art. 69

Incomplete justifying (*RPC, Art. 11*) and incomplete exempting (*RPC, Art. 12*) circumstances, provided that the majority of their conditions are present

For this article to apply, it is necessary that:

1. Some of the conditions required to justify the deed or to exempt from criminal liability are lacking,
2. The majority of such conditions are nonetheless present, and
3. When the circumstance has an indispensable element, that element must be present in the case (*Regalado, 2007*).

**INCOMPLETE JUSTIFYING OR EXEMPTING CIRCUMSTANCE
ART. 13(1), RPC**

Incomplete justifying or exempting circumstance

Incomplete justifying/exempting circumstance means that not all the requisites to justify the act are present or not all the requisites to exempt from criminal liability are present.

Effect on criminal liability of the offender of incomplete justifying circumstances or incomplete exempting circumstances

If less than the majority of the requisites necessary to justify the act or exempt from criminal liability are present, the offender shall only be entitled to an ordinary mitigating circumstance.

If a majority of the requisites needed to justify the act or exempt from criminal liability are present, the offender shall be given the benefit of a privileged mitigating circumstance. The impossible penalty shall be lowered by one or two degrees. When there are only two conditions to justify the act or to exempt from criminal liability, the presence of one shall be regarded as the majority.

Unlawful aggression: condition necessary before incomplete self-defense, defense of relative, or defense of stranger may be invoked

The offended party must be guilty of unlawful aggression. Without unlawful aggression, there can be no incomplete self-defense, defense of relative, or defense of stranger.

Effect on the criminal liability of the offender of incomplete self-defense, defense of relative, or defense of stranger

If only the element of unlawful aggression is present, the other requisites being absent, the offender shall be given only the benefit of an ordinary mitigating circumstance.

However, if aside from the element of unlawful aggression another requisite, but not all, is present, the offender shall be given the benefit of a privileged mitigating circumstance. In such a case, the impossible penalty shall be reduced by one or two degrees depending upon how the court regards the importance of the requisites present or absent.

If there are at least three mitigating circumstances, the first two the penalty is lowered by one degree while the last mitigating circumstance is imposed in minimum period after being lowered by one degree.

Not applicable to exempting circumstance of accident

Under Art. 12, par. 4, there are four requisites for the exempting circumstance of accident. First, a person must be performing a lawful act. Second, such must be done with due care. Third, an injury was caused to another by mere accident. Fourth, there is no fault or intention of causing such injury.

If the act was performed with due care but there was fault in causing an injury, the case will fall under Article 365, felonies by negligence or imprudence. The effect would be like a mitigating circumstance since said article states that the penalty will be lower than if the felony was committed intentionally.

If the person is performing a lawful act but has the intention to cause an injury, it will be an intentional felony, the second and third requisite will no longer apply.

NOTE: There is no incomplete exempting circumstance of insanity. There is no middle ground between sanity and insanity.

**UNDER 18 OR OVER 70 YEARS OLD
ART. 13(2), RPC**

Coverage

Offenders who are:

1. Over 15 but under 18 years old who acted with discernment; and
2. Over 70 years old

NOTE: It is the age of the accused *at the time of the commission of the crime* which should be determined.

Legal effects of the various age brackets of the offender with respect to his criminal liability

AGE BRACKET	EFFECT ON CRIMINAL LIABILITY
15 and	Exempting circumstance.

under	
Over 15 under 18	<i>Exempting circumstance</i> , if he acted without discernment. <i>Mitigating circumstance</i> , if he acted with discernment.
18 to 70	Full criminal responsibility.
Over 70	Mitigating circumstance; no imposition of death penalty; execution of death sentence if already imposed is suspended and commuted.

Senility and its effect

Senility, or “second childhood” is generally used to describe the state of a person of very old age with impaired or diminished mental faculties similar to but not on the level of the early years of infancy. It can, at most, be only mitigating, unless the mental deterioration has become a case of senile dementia approximating insanity, in which case it may be considered as an exempting circumstance.

**NO INTENTION TO COMMIT SO GRAVE A
WRONG (*PRAETER INTENTIONEM*)
ART. 13(3), RPC**

Basis

The basis is diminution of intent.

It is necessary that there be a notable and evident disproportion between the means employed by the offender compared to that of the resulting felony. If the resulting felony could be expected from the means employed, the circumstance of *praeter intentionem* cannot be availed.

Factors in order to ascertain the intention

1. The weapon used;
2. The part of the body injured;
3. The injury inflicted; and
4. The manner it is inflicted.

This provision addresses the intention of the offender at the particular moment when the offender executes or commits the criminal act and not during the planning stage.

GR: Praeter Intentionem is a mitigating circumstance.

XPN: 1. felonies by negligence
2. employment of brute force
3. Anti-Hazing law

Effect if the victim does not die in crimes against persons

The absence of the intent to kill reduces the felony to mere physical injuries. It is not considered as mitigating. It is only mitigating when the victim dies.

NOTE: The mitigating circumstance of lack of intent to commit so grave a wrong as that actually perpetrated cannot be appreciated where the acts employed by the accused were reasonably sufficient to produce and did actually produce the death of the victim (*People v. Sales, G.R. No. 177218, October 3, 2011*).

Q: Buenamer committed robbery inside a passenger FX by threatening to shoot the passengers if they do not give their wallets and cellphones. Buenamer was successful in taking the things of the passengers. One of the passengers, Tan, chased Buenamer who boarded a passenger jeepney in order to escape. Buenamer boxed Tan when he held on the handle bar of the jeepney causing him to lose his grip and fall from the jeepney and thereafter was ran over by the rear tire of said jeepney and died.

Buenamer contends that he should be given the mitigating circumstance of lack of intent to commit so grave a wrong. Is Buenamer entitled for the mitigating circumstance?

A: No. This mitigating circumstance addresses itself to the intention of the offender at the particular moment when the offender executes or commits the criminal act." This mitigating circumstance is obtaining when there is a notable disparity between the means employed by the accused to commit a wrong and the resulting crime committed. The intention of the accused at the time of the commission of the crime is manifested from the weapon used, the mode of attack employed, and the injury sustained by the victim. (*People vs. Buenamer G.R. No. 206227, August 31, 2016*)

**SUFFICIENT THREAT OR PROVOCATION
ART. 13(4), RPC**

Requisites of sufficient threat or provocation

1. Provocation must be sufficient;
2. It must originate from the offended party; and
3. It must be immediate to the act.

Basis

The basis is loss of reasoning and self-control, thereby diminishing the exercise of his will power.

Threat need not be offensive and positively strong

Threat should not be offensive and positively strong because if it was, the threat to inflict real injury becomes an *unlawful aggression* which may give rise to self-defense and thus, no longer a mitigating circumstance.

Provocation

Provocation is any unjust or improper conduct or act of the offended party, capable of exciting, inciting or irritating anyone.

"Sufficient threat or provocation as a mitigating circumstance" vis-à-vis "Threat or provocation as an element of self-defense"

As an element of self-defense it pertains to its absence on the part of the person defending himself while as a mitigating circumstance, it pertains to its presence on the part of the offended party (*People v. CA, G.R. No. 103613, Feb. 23, 2001*).

Sufficiency depends on:

1. The act constituting the provocation
2. The social standing of the person provoked
3. Time and place the provocation took place

Q: Tomas' mother insulted Petra. Petra kills Tomas because of the insults. Can Petra avail of the mitigating circumstance?

A: NO. There is no mitigating circumstance because it was the mother who insulted her, not Thomas.

The liability of the accused is mitigated only insofar as it concerns the harm inflicted on the person who made the provocation, but not with regard to the other victims who did not

participate in the provocation (*US v. Malabanan, G.R. No. 3964, November 26, 1907*).

Reason why the law requires that “provocation must be immediate to the act,” (i.e., to the commission of the crime by the person who is provoked)

If there was an interval of time, the conduct of the offended party could not have excited the accused to the commission of the crime, he having had time to regain his reason and to exercise self-control. Moreover, the law presupposes that during that interval, whatever anger or diminished self-control may have emerged from the offender had already vanished or diminished.

As long as the offender at the time he committed the felony was still under the influence of the outrage caused by the provocation or threat, he is acting under a diminished self-control. This is the reason why it is mitigating. However, there are two criteria that must be taken into consideration:

1. If there is a material lapse of time and there is no finding that the effect of the threat or provocation had prolonged and affected the offender at the time he committed the crime, then the criterion to be used is based on time element.
2. However, if there is that time element and at the same time, there is a finding that at the time the offender committed the crime, he is still suffering from outrage of the threat or provocation done to him, then, he will still get the benefit of this mitigating circumstance.

**VINDICATION OF A GRAVE OFFENSE
ART. 13(5), RPC**

Basis

The basis is loss of reasoning and self-control, thereby, diminishing the exercise of his will power.

NOTE: This has reference to the honor of a person. It concerns the good names and reputation of the individual (*U.S. v. Ampar, G.R. No. 12883, November 26, 1917*).

Requisites of vindication of a grave offense

1. Grave offense has been done to the one committing the felony, his spouse, ascendants, descendants, legitimate, natural or adopted brothers or sisters, or relatives by affinity within the same degree; and
2. A felony is committed in vindication of such grave offense.

“Offense” contemplated

The word offense should not be construed as equivalent to crime. It is enough that a wrong doing was committed.

Factors to be considered in determining whether the wrong is grave or not

1. Age;
2. Education; and
3. Social status.

Lapse of time allowed between the vindication and the doing of the grave offense

The word “immediate” in par. 5 is not an accurate translation of the Spanish text which uses the term “*proxima*.” A lapse of time is allowed between the vindication and the doing of the grave offense. It is enough that:

1. The offender committed the crime;
2. The grave offense was done to him, his spouse, his ascendant or descendant or to his brother or sister, whether natural, adopted or legitimate; and
3. The grave offense is the proximate cause of the commission of the crime.

Where four days elapsed from the knowledge of the supposed sexual assault and the attack, there was sufficient time to regain composure and self-control. Thus, there was no “immediate vindication of a grave offense” (*People v. Rebucan, G.R. 182551, July 27, 2011*).

Circumstances of sufficient threat or provocation vis-à-vis vindication of a grave offense

SUFFICIENT THREAT OR PROVOCATION	VINDICATION OF GRAVE OFFENSE
It is made directly only to the person committing the felony.	The grave offense may be committed also against the offender’s

	relatives mentioned in the law.
The cause that brought about the provocation need not be a grave offense.	The offended party must have done a grave offense against the offender or his relatives mentioned in the law.
It is necessary that the provocation or threat immediately preceded the act. There must be no interval of time between the provocation and the commission of the crime.	The vindication of the grave offense may be proximate which admits of interval of time between the grave offense committed by the offended party and the commission of the crime of the accused.

**PASSION OR OBFUSCATION
ART. 13(6), RPC**

Basis

The basis is loss of reasoning and self-control, thereby diminishing the exercise of his will power.

Passion or obfuscation (BAR 2013)

Passion and obfuscation refer to emotional feeling which produces excitement so powerful as to overcome reason and self-control. It must come from prior unjust or improper acts. The passion and obfuscation must emanate from legitimate sentiments.

Passion and obfuscation as a mitigating circumstance need not be felt only in the seconds before the commission of the crime. It may build up and strengthen over time until it can no longer be repressed and will ultimately motivate the commission of the crime (*People v. Oloverio*, G.R. No. 211159, March 18, 2015).

Elements of passion or obfuscation as a mitigating circumstance

1. Accused acted upon an impulse; and
2. Impulse must be so powerful that it naturally produced passion or obfuscation in him.

The passion or obfuscation should arise from lawful sentiments in order to be mitigating.

Requisites of passion or obfuscation

1. That there is an act, both unlawful and sufficient to produce such a condition of mind; and
2. That the said act which produced the obfuscation was not far removed from the commission of the crime by a considerable length of time, during which the perpetrator might recover his natural equanimity.

Applicable rule when the three mitigating circumstances of sufficient threat or provocation (par. 4), vindication of a grave wrong (par. 5) and passion or obfuscation (par. 6) are present

GR: If the offender is given the benefit of paragraph 4, he cannot be given the benefit of paragraph 5 or 6, or vice-versa. Only one of the three mitigating circumstances should be given in favor of the offender.

XPN: If the mitigating circumstances under paragraphs 4, 5 and 6 arise from different sets of facts, they may be appreciated together, although they may have arisen from one and the same case.

Circumstances where passion or obfuscation is not a mitigating circumstance

If the act is committed in the spirit of:

1. Lawlessness; or
2. Revenge

Appreciation of passion and obfuscation as a mitigating circumstance

It may be appreciated even if the reported acts causing obfuscation was not true, as long as it was honestly and reasonably believed by the accused to be true (*People v. Guhiting*, G.R. No. L-2843, May 14, 1951).

Passion/Obfuscation vis-à-vis Provocation

PASSION/OBFUSCATION	PROVOCATION
The effect is the loss of reason and self-control	
It is produced by an impulse which may cause provocation.	The provocation comes from the injured party.
The offense need not be immediate. It is only required that the influence thereof lasts until the	It must immediately precede the commission of the



moment the crime is committed.	crime.
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Passion/Obfuscation vis-à-vis Irresistible force

PASSION OBFUSCATION	IRRESISTIBLE FORCE
Mitigating circumstance.	Exempting circumstance.
It cannot give rise to irresistible force because passion or obfuscation has no physical force.	It requires physical force.
The passion or obfuscation is on the offender himself.	It must come from a third person.
It must arise from lawful sentiments.	The force used is unlawful.

Invocation of passion or obfuscation

As a rule, passion or obfuscation can only be used as a mitigating circumstance. However, under Art. 247 (Death or Physical Injuries under Exceptional Circumstances), it may be used as an exempting circumstance, if an injury is inflicted other than serious physical injuries and killing.

**VOLUNTARY SURRENDER AND CONFESSION OF GUILT
ART. 13(7), RPC**

Basis

The basis is the lesser perversity of the offender. The offender is willing to accept the consequences of the wrong he has done which thereby saves the government the effort, time and expenses to be incurred in searching for him.

Mitigating circumstances under this paragraph

1. Voluntary surrender to a person in authority or his agents; and
2. Voluntary confession of guilt before the court prior to the presentation of evidence for the prosecution.

When both are present, they should have the effect of two independent mitigating circumstances.

Requisites of voluntary surrender

1. Offender had not been actually arrested;
2. Surrender was made to a person in authority or the latter's agent; and
3. Surrender was voluntary.

Surrender considered as voluntary

Surrender is considered voluntary when it is spontaneous, demonstrating intent to submit himself unconditionally to the person in authority or his agent, either:

1. Because he acknowledges his guilt
2. Because he wishes to save them the trouble and expense necessarily included for his search and capture.

Whether a warrant of arrest had been issued against the offender is immaterial and irrelevant. The criterion is whether or not the offender had gone into hiding or had the opportunity to go into hiding and the law enforcers do not know of his whereabouts.

GR: There was no voluntary surrender if the warrant of arrest showed that the defendant was in fact arrested.

XPN: If after committing the crime, the offender did not flee and instead *waited* for the law enforcers to arrive, and then he surrendered the weapon he used in killing the victim, voluntary surrender is mitigating, however, if after committing the crime, the offender did not flee and instead he went with the *responding* law enforcers meekly, voluntary surrender is not applicable.

"Spontaneous"

It emphasizes the idea of inner impulse acting without external stimulus. The conduct of the accused, not his intention alone, after the commission of the offense, determines the spontaneity of the surrender.

Requirement that the accused surrender prior to the order of arrest

The law does not require that the accused surrender prior to the order of arrest. What matters is the spontaneous surrender of the accused upon learning that a warrant of arrest had been issued against him and that voluntary surrender is obedience to the order of arrest

issued against him (*People v. Cahilig, G.R. No. 46612, October 14, 1939*).

Person in authority

He is one directly vested with jurisdiction, whether as an individual or as a member of some court/government/corporation/board/commission.

Agent of a person in authority

He is a person who, by direct provision of law, or by election, or by appointment by competent authority, is charged with the maintenance of public order and the protection and security of life and property and any person who comes to the aid of persons in authority.

Q: If the accused escapes from the scene of the crime in order to seek advice from a lawyer, and the latter ordered him to surrender voluntarily to the authorities, which the accused followed by surrendering himself to the municipal mayor, will his surrender be considered mitigating?

A: YES, because he fled to the scene of a crime not to escape but to seek legal advice.

Q: Y, while alighting from his vehicle, was hit by X with his car. This caused X to be thrown four meters away from his jeepney. X was charged with Frustrated Murder and convicted in the RTC of Frustrated Homicide. Upon appeal in the CA the crime was modified to Reckless Imprudence resulting in Serious Physical Injuries. X contends that the CA should have appreciated voluntary surrender as a mitigating circumstance in his favor. Is X's contention correct?

A: No. The mitigating circumstance of voluntary surrender cannot be appreciated in his favor. Paragraph 5 of Article 365, Revised Penal Code, expressly states that in the imposition of the penalties, the courts shall exercise their sound discretion, without regard to the rules prescribed in Article 64 of the Revised Penal Code (*Mariano v. People, G.R. No. 178145, July 7, 2014*).

Requisites of confession of guilt (BAR 1999)

1. The offender spontaneously confessed his guilt;

2. It was made in open court (that is before the competent court that is to try the case); and
3. It was made *prior* to the presentation of evidence for the prosecution.

NOTE: Qualified plea/plea of guilty to lesser offense than that charged is not mitigating. For voluntary confession to be appreciated, the confession must not only be made unconditionally but the accused must admit the *offense charged*.

Plea of guilty not applicable to all crimes

A plea of guilty is not mitigating in culpable felonies, and in crimes punished by special laws.

Q: Upon learning that the police wanted him for the killing of Polistico, Jeprox decided to visit the police station to make inquiries. On his way, he met a policeman who immediately served upon him the warrant for his arrest. During the trial, in the course of the presentation of the prosecution's evidence, Jeprox withdrew his plea of not guilty. Can he invoke the mitigating circumstances of voluntary surrender and plea of guilty? (BAR 1992)

A: NO. Jeprox is not entitled to the mitigating circumstance of voluntary surrender as his going to the police station was only for the purpose of verification of the news that he is wanted by the authorities. In order to be mitigating, surrender must be spontaneous and that he acknowledges his guilt.

Neither is plea of guilty a mitigating circumstance because it was a qualified plea. Besides, Art. 13(7) provides that confession of guilt must be done before the prosecution had started to present evidence.

NOTE: Where in the original information the accused pleaded not guilty, but he pleaded guilty to the amended information, it is considered as a voluntary plea of guilty and considered a mitigating circumstance (*People v. Ortiz, G.R. No. L-19585, Nov. 29, 1965*).

**PHYSICAL DEFECT
ART. 13(8), RPC**

Basis



The basis is the diminution of the element of voluntariness.

Physical defect

A person's physical condition, such as being deaf and dumb, blind, armless, cripple, or stutterer, whereby his means of action, defense or communication with others are restricted or limited. The physical defect that a person may have must have a relation to the commission of the crime.

Requisites of physical defect

1. The offender is deaf and dumb, blind or otherwise suffering from some physical defect; and
2. Such physical defect restricts his means of action, defense, or communication with his fellow beings.

Q: Suppose X is deaf and dumb and he has been slandered, he cannot talk so what he did was, he got a piece of wood and struck the fellow on the head. X was charged with physical injuries. Is X entitled to a mitigating circumstance by reason of his physical defect?

A: YES, the Supreme Court held that being a deaf and dumb is mitigating because the only way to vindicate himself is to use his force because he cannot strike back by words.

NOTE: The law says that the offender is deaf and dumb, meaning not only deaf but also dumb, or that he is blind, meaning in both eyes, but even if he is only deaf and not dumb, or dumb but not deaf, or blind only in eye, he is still entitled to a mitigating circumstance under this article as long as his physical defects restricts his means of communication, defense, communication with his fellowmen.

NOTE: The law does not distinguish between educated and uneducated deaf-mute or blind persons. The Code considers them as being on equal footing (*Reyes, 2017*).

**ILLNESS OF THE OFFENDER
ART. 13(9), RPC**

Basis

The basis is diminution of intelligence and intent.

Requisites of illness of the offender

1. Illness of the offender must diminish the exercise of will power; and
2. Such illness should not deprive the offender the consciousness of his acts.

If the illness not only diminishes the exercise of the offender's will power but deprives him of the consciousness of his acts, it becomes an exempting circumstance to be classified as insanity or imbecility.

NOTE: Polio victim in his younger days of limping while he walks cannot claim mitigating circumstance in the crime of oral defamation.

NOTE: Schizophrenic reaction is only mitigating not exempting.

Schizophrenic reaction, although not exempting because it does not completely deprive the offender of the consciousness of his acts, may be considered as a mitigating circumstance under Article 13(9) of the RPC, i.e., as an illness which diminishes the exercise of the offender's will-power without, however, depriving him of the consciousness of his acts. (*People v. Rafanan, G.R. No. L-54135, November 21, 1991*)

**SIMILAR AND ANALOGOUS CIRCUMSTANCES
ART. 13(10), RPC**

Examples of analogous circumstances

1. The act of the offender of leading the law enforcers to the place where he buried the instrument of the crime has been considered as equivalent to voluntary surrender.
2. Stealing by a person who is driven to do so out of extreme poverty is considered as analogous to incomplete state of necessity (*People v. Macbul, G.R. No. 48976, October 11, 1943*), unless he became impoverished because of his own way of living his life, i.e. he had so many vices.
3. Defendant who is 60 years old with failing eyesight is similar to a case of a person over 70 years of age (*People v. Reantillo and Ruiz, C.A. G.R. No. 301, July 27, 1938*).
4. Impulse of jealous feeling, similar to passion and obfuscation.

5. Voluntary restitution of property, similar to voluntary surrender.
6. Outraged feeling of the owner of animal taken for ransom is analogous to vindication of grave offense.
7. *Esprit de corps* is similar to passion and obfuscation.
8. Wartime state of confusion resulting in illegal possession of firearm after the liberation (*People v. Quemuel*, 76 Phil 135), as being similar to lack of intent to commit so grave a wrong.
9. Testifying for the prosecution without being discharged from the information (*People v. Narvasca, et al.*, G.R. No. L-28107, March 15, 1977), as being like a plea of guilty.
10. Acting out of embarrassment and fear caused by the victim because of gambling debts of the accused (*People v. Ong, et al.*, G.R. No. L-34497, January 30, 1975), as akin to passion or obfuscation.
11. Retaliating for having been assaulted during a public dance where the accused was well known and respected (*People v. Libria*, 95 Phil. 398), as similar to vindication.
12. When the petitioner submits extrajudicial confession through the handwritten letter coupled with her act of surrendering the redeemed pawn tickets and thereafter going to the police station (*Frontreras v. People*, G.R. No. 190583, December 07, 2015), as an analogous circumstance of voluntary surrender.

Significance of this paragraph

The significance of this paragraph is that even though a particular circumstance does not fall under any of the enumerated circumstances in Art. 13, the court is authorized to consider in favor of the accused "any other circumstance of a similar nature and analogous to those mentioned."

In *Jarillo* case, the SC ruled that an abandoned wife who remained and found guilty of Bigamy, is entitled to a mitigating circumstance of "for humanitarian reason" as her marriage with the complainant was later on declared null and void (G.R. No. 164435, September 29, 2009).

Circumstances which are neither exempting nor mitigating

1. Mistake in the blow or *aberratio ictus*;
2. Entrapment;

3. Accused is over 18 years of age; and
4. Performance of righteous action.

AGGRAVATING CIRCUMSTANCES ART. 14, RPC

Aggravating circumstances

Those which, if attendant in the commission of the crime:

1. Serve to have the penalty imposed in its maximum period provided by law for the offense; or
2. Change the nature of the crime.

Basis

They are based on the greater perversity of the offender manifested in the commission of the felony as shown by:

1. The motivating power itself;
2. The place of commission;
3. The means and ways employed;
4. The time; and
5. The personal circumstances of the offender or the offended party

Kinds of aggravating circumstances (BAR 1999)

1. Generic or those that can generally apply to almost all crimes.

Examples:

- a. Dwelling
- b. Recidivism
- c. In consideration of price, reward or promise
- d. Night time

2. Specific or those that apply only to particular crimes.

Examples:

- a. Cruelty in crimes against persons (RPC, Art. 14)
- b. Treachery in crimes against persons (RPC, Art. 14)
- c. The victim is the offender's parents, ascendants, guardians, curators, teachers, or persons in authority, in less serious physical injuries (RPC, Art. 265, par. 3).
- d. Unlicensed firearms in robbery in band (RPC, Art. 296),



- e. Abuse of authority or confidential relations by guardians or curators in seduction, rape, acts of lasciviousness, white slavery and corruption of minors (RPC, Art. 346)
 - f. Positive finding in the use of dangerous drugs for crimes punishable under RA 9165 (*Dela Cruz v. People, GR 200748, July 23, 2014*)
3. Qualifying or those that change the nature of the crime.
Examples:
- a. By means of poison
 - b. With the aid of armed men
 - c. Treachery, in killing persons
 - d. Grave abuse of confidence which makes stealing as qualified theft
4. Inherent or those that must of necessity accompany the commission of the crime.
Examples:
- a. Abuse of public office in bribery;
 - b. Breaking of a wall or unlawful entry into a house in robbery with the use of force upon things;
 - c. Fraud in *estafa*;
 - d. Deceit in simple seduction;
 - e. Ignominy in rape;
 - f. Evident premeditation in robbery and *estafa*;
 - g. Disregard of respect due the offended party on account of rank in direct assault;
 - h. Superior strength in treason; and
 - i. Cruelty in mutilation.
5. Special or those that cannot be offset by an ordinary mitigating circumstance and has the result of imposing the penalty in the maximum period.
Examples:
- a. Quasi-recidivism (RPC, Art. 160);
 - b. Complex crime (RPC, Art. 48); and
 - c. Taking advantage of public position and membership in an organized or syndicated crime group [RPC, Art. 62, par. 1(a)].
 - d. The use of a loose firearm when inherent in the commission of a crime (RA 10591, Sec. 29)
 - e. Organized or syndicated crime group (RPC, Art. 62)

NOTE: Under Sec. 8 and 9, Rule 110 of the Revised Rules of Criminal Procedure, aggravating

circumstances must be alleged in the information or complaint; otherwise, they cannot be properly appreciated.

Generic aggravating vis-à-vis Qualifying circumstances

GENERIC AGGRAVATING CIRCUMSTANCES	QUALIFYING AGGRAVATING CIRCUMSTANCES
Affects only the imposition of the penalty prescribed, but not the nature of the crime committed.	Affects the nature of the crime or brings about a penalty higher in degree than that ordinarily prescribed.
Can be offset by an ordinary mitigating circumstance.	GR: Cannot be offset by any mitigating circumstances. XPN: Privileged mitigating circumstances.
Both must be alleged in the information in order to be appreciated.	

When there is more than one qualifying aggravating circumstance present, one of them will be appreciated as qualifying aggravating while the others will be considered as generic aggravating.

Circumstances which aggravate criminal liability

1. Advantage taken of public position;
2. Contempt or insult to public authorities;
3. Disregard of age, sex, or dwelling of the offended party; (**BAR 1996, 2009**)
4. Abuse of confidence and obvious ungratefulness;
5. Palace and places of commission of offense;
6. Nighttime, uninhabited place or band; (**BAR 1994, 1997, 2009**)
7. On occasion of calamity or misfortune;
8. Aid of armed men, or persons who insure or afford impunity;
9. Recidivist; (**BAR 1993, 2009, 2014**)
10. *Reiteracion*;
11. Price, reward, or promise;
12. By means of inundation, fire, poison, explosion, stranding of a vessel or intentional damage thereto, derailment of a locomotive, or by the use of any other artifice involving great waste or ruin.;
13. Evident premeditation; (**BAR 1991, 2009**)

14. Craft, fraud or disguise; **(BAR 1995)**
15. Superior strength or means to weaken the defense;
16. Treachery;
17. Ignominy;
18. Unlawful entry;
19. Breaking wall;
20. Aid of minor or by means of motor vehicle or other similar means; and
21. Cruelty. **(BAR 1994)**

Position and standing of the accused considered as aggravating

Where a person found guilty of violation of Gambling law is a man of station or standing in the community, the maximum penalty should be imposed (*U.S. v. Salaveria, G.R. No. L-13678, November 12, 1918*).

Aggravating circumstances which do not have the effect of increasing the penalty

Aggravating circumstances which:

1. In themselves constitute a crime especially punishable by law[RPC, Art. 62(1)];
2. Included by law in defining a crime and prescribing penalty[RPC, Art. 62(1)]; and
3. Inherent in the crime to such a degree that it must of necessity accompany the commission thereof[RPC, Art. 62(2)].

Aggravating circumstances personal to the offenders

Aggravating circumstances which arise:

1. From the moral attributes of the offender;
2. From his private relations with the offended party; and
3. From any other personal cause.

Appreciation of personal aggravating circumstances

It shall only serve to aggravate the liability of those persons as to whom such circumstances are attendant (RPC, Art. 62, par. 3).

Appreciation of an aggravating circumstance if there are several accused

GR: The circumstances which serve to aggravate or mitigate the liability of those persons only who had knowledge of them at the time of the

execution of the act or their cooperation therein are those which consist in the:

1. Material execution of the act; or
2. Means employed to accomplish it

XPN: When there is proof of conspiracy, in which case the act of one is deemed to be the act of all, regardless of lack of knowledge of the facts constituting the circumstance (RPC, Art. 62, par. 4).

TAKING ADVANTAGE OF PUBLIC POSITION ART. 14 (1), RPC

Basis

The greater perversity of the offender, as shown by the means:

1. Of personal circumstance of the offender; and
2. Used to secure the commission of the crime.

Taking advantage of public position

The public officer:

1. Abused his public position; or
2. At least, the use of the same facilitated the commission of the offense.

To be applicable the public officer must have used his:

- a. Influence
- b. Prestige
- c. Ascendancy

There is no abuse of public position when the offender could have perpetuated the crime even without occupying his position.

Taking advantage of public position is a special aggravating circumstance

When in the commission of the crime, advantage was taken by the offender of his public position, the penalty to be imposed shall be in its maximum regardless of mitigating circumstances (RPC, Art. 62, as amended by RA 7659)

When taking advantage of public position not considered as an aggravating circumstance

This circumstance is not applicable in offenses where taking advantage of official position is made by law an integral element of the crime,

such as in malversation or in falsification of document committed by public officers.

**CONTEMPT OR INSULT TO PUBLIC
AUTHORITIES
ART. 14 (2), RPC**

Basis

The greater perversity of the offender, as shown by his lack of respect for the public authorities.

Requisites of contempt or insult to public authorities as an aggravating circumstance

1. That the public authority is engaged in the exercise of his functions;
2. Such authority is not the person against whom the crime is committed;
3. Offender knows him to be a public authority; and
4. His presence has not prevented the offender from committing the crime.

Public authority

Public authority also called a “person in authority” is a public officer directly vested with jurisdiction, whether as an individual or as a member of some court or governmental corporation, board, or commission, shall be deemed a person in authority. A barrio captain and a barangay chairman shall also be deemed a person in authority (*Art 152 as amended by PD No. 1232*).

NOTE: Teachers, professors and persons charged with the supervision of public or duly recognized private schools, colleges and universities, and lawyers in the actual performance of their professional duties or on the occasion of such performance, are persons in authority *only* for purposes of direct assault and simple resistance.

Necessity that the offender has knowledge that the public authority is present

Knowledge that a public authority is present is essential. Lack of such knowledge indicates lack of intention to insult the public authority.

**DISREGARD OF RANK, SEX, AGE OR DWELLING
ART. 14 (3), RPC**

Par. 3 provides for four aggravating circumstances which, if present in the same case, should be considered independently of each other and numerically reckoned accordingly (*People v. Santos, et al., G.R. No. L-4189, May 21, 1952*).

Basis

The greater perversity of the offender, as shown by the personal circumstances of the offended party and the place of commission.

Ways of committing the aggravating circumstance under this paragraph

That the act be committed:

1. With insult or in disregard of the respect due to the offended party on account of his:
 - a. Rank
 - b. Age
 - c. Sex
2. In the dwelling of the offended party, if the latter has not given sufficient provocation.

NOTE: Disregard of rank, age or sex is essentially applicable only to crimes against honor or persons. They are NOT taken into account in crimes against property. They do not apply to the special complex crime of robbery with homicide which is classified as crime against property (*U.S. v. Samonte, 8 Phil. 286*).

NOTE: Disregard of rank, age or sex cannot co-exist with passion or obfuscation.

“With insult or in disregard”

In the commission of the crime, the accused *deliberately intended* to offend or insult the sex or age of the offended party.

Rank

It refers to official, civil, or social position or standing. It is the designation or title of distinction used to fix the relative position of the offended party in reference to others. There must be a difference in the social condition of the offender and the offended party.

Age

Age applies in cases where the victim is of tender age or is of old age.

The circumstance of lack of respect due to age applies in cases where the victim is of tender age as well as of old age.

The circumstance of old age cannot be considered aggravating in the absence of evidence that the accused deliberately intended to offend or insult the age of the victim. (People vs. Diaz SCRA 178, 187)

Sex

Sex refers to the female sex, not to the male sex.

Disregard for sex is not aggravating in the absence of evidence that the accused deliberately intended to offend or insult the sex of the victim or showed manifest disrespect to her womanhood.

What if all four aggravating circumstances are present?

They have the weight of one aggravating circumstance only (*Reyes, 2017*).

When aggravating circumstance of disregard of rank, age, sex not considered for the purpose of increasing penalty

1. When the offender acted with passion or obfuscation (All three circumstances);
2. When there exists a relationship between the offended party and the offender; or
3. When the condition of being a woman is indispensable in the commission of the crime (*e.g.* parricide, rape, abduction and seduction).

Dwelling

Dwelling is a building or structure exclusively used for rest or comfort, which includes temporary dwelling, dependencies, foot of the staircase and enclosure of the house. It does not necessarily refer to the permanent residence or domicile of the offended party or that he must be the owner thereof. He must, however, be actually living or dwelling therein even for a temporary duration or purpose.

It is not necessary that the accused should have actually entered the dwelling of the victim to commit the offense. It is enough that the victim was attacked inside his own house, although the assailant may have devised means to perpetrate

the assault, *i.e.* triggerman fired the shot from outside the house; while his victim was inside.

Even if the person attacked is only a welcomed guest of the owner of the dwelling, as long as neither he nor the owner gave no provocation, there is an aggravating circumstance of dwelling.

Dwelling not aggravating

1. When the owner of the dwelling gave sufficient and immediate provocation;
2. When the offender and the offended party are occupants of the same house except in case of adultery in the conjugal dwelling, the same is aggravating; however, if one of the dwellers therein becomes a paramour, the applicable aggravating circumstance is abuse of confidence.
3. In the crime of robbery by use of force upon things;
4. In the crime of trespass to dwelling;
5. The victim is not a dweller of the house; and

NOTE: Dwelling is not absorbed or included in treachery

Provocation in the aggravating circumstance of dwelling

The provocation must be:

1. Given by the owner or occupant of the dwelling;
2. Sufficient; and
3. Immediate to the commission of the crime.

If all of these are present, the offended party is deemed to have given provocation, and the fact that the crime is committed in the dwelling of the offended party is NOT an aggravating circumstance.

ABUSE OF CONFIDENCE OR OBVIOUS UNGRATEFULNESS ART. 14 (4), RPC

Basis

The greater perversity of the offender, as shown by the means and ways employed.

NOTE: These are two separate aggravating circumstances.

Abuse of confidence



This circumstance exists only when the offended party has trusted the offender who later abuses such trust by committing the crime.

Requisites of abuse of confidence

1. The offended party had trusted the offender;
2. The offender abused such trust by committing a crime against the offended party; and
3. The abuse of confidence facilitated the commission of the crime

The confidence between the parties must be immediate and personal, as would give the accused the advantage or make it easier for him to commit the crime. The confidence must be a means of facilitating the commission of a crime.

Abuse of confidence is inherent in the following crimes hence, not considered as an aggravating circumstance

1. Malversation (RPC, Art. 217);
2. Qualified Theft (RPC, Art. 310);
3. *Estafa* by conversion or misappropriation (RPC, Art 315); and
4. Qualified Seduction (RPC, Art. 337).

Requisites of obvious ungratefulness

1. That the offended party had trusted the offender;
2. Abused such trust by committing a crime against the offended party; and
3. That the act be committed with obvious ungratefulness.

NOTE: The ungratefulness must be of such clear and manifest ingratitude on the part of the accused.

**PLACE AND PLACES OF COMMISSION
OF THE OFFENSE
ART. 14 (5), RPC**

Basis

The greater perversity of the offender, as shown by the place of the commission of the crime, which must be respected.

Places of commission of offenses

The crime is committed:

1. In the palace of the Chief Executive;
2. In his presence;
3. Where public authorities are engaged in the discharge of their duties; or
4. In a place dedicated to religious worship.

NOTE: The place where public authorities are discharging their duties is not aggravating in direct assault on a person then engaged in the performance of judicial duties because the circumstance is absorbed in the nature of the crime (*People v. Perez, CA, 57 O.G. 1598*).

The Chief Executive need not be engaged in his official functions

It is NOT necessary that the Chief Executive is engaged in his official functions. The presence of the Chief Executive alone in any place where the crime is committed is enough to constitute the aggravating circumstance, but the offender must be aware of the presence of the President.

Necessity of public authorities to be engaged in the discharge of their duties

Public authorities must actually be engaged in the discharge of their duties, there must be some performance of public functions.

Par. 5 vis-à-vis Par. 2

PAR. 5	PAR. 2
<i>Places of commission</i>	<i>Insult to public authorities</i>
Public duty is performed in their Office.	Public duty is performed outside their Office.
The offended party may or may not be the public authority.	Public authority should not be the offended party.
In both, public authorities are in the performance of their duties.	

Crimes committed in the Malacañang palace or church are always aggravating

Regardless of whether State or Official or Religious Functions are being held.

Place dedicated to religious worship

The place must be permanently dedicated to public religious worship. Private chapels are not included.

NOTE; Cemeteries are NOT places dedicated to the worship of God.

NOTE: To be considered aggravating, the accused must have purposely sought the place for the commission of the crime and that he committed it there notwithstanding the respect to which it was entitled, and not where it was only an accidental or incidental circumstance (*People v. Jaurigue, et al., C.A. No. 3824, February 21, 1946*).

**NIGHT TIME, UNINHABITED
PLACE OR BY A BAND
ART. 14 (6), RPC**

Consideration of the circumstances

These circumstances should be considered separately.

Instances when night time, uninhabited place or band is considered aggravating

When:

1. It facilitated the commission of the crime;
2. It is especially sought for by the offender to ensure the commission of the crime

NOTE: "*Especially sought*" means that the offender sought it in order to realize the crime with more ease.

3. The offender took advantage thereof for the purpose of impunity.

"*Impunity*" means to prevent the offender from being recognized or to secure himself against detection and punishment.

"*Took advantage*" means that the accused availed himself thereof for the successful consummation of his plans.

Nighttime

Nighttime or nocturnity is a period from after sunset to sunrise, from dusk to dawn. It is necessary that the commission of the crime was commenced and completed at night time.

Darkness of the night makes nighttime an aggravating circumstance. Hence, when the place of the crime is illuminated or sufficiently lighted, nighttime is not aggravating. It is also necessary that the commission of the crime was begun and completed at night time. Hence, where the series of acts necessary for its commission was begun at daytime and was completed that night (*People v. Luchico, G.R. No. 26170, December 6, 1926*), or was begun at night and consummated the following day (*U.S. v. Dowdell, Jr., et al., G.R. No. 4191, July 18, 1908*), the aggravating circumstance of nighttime was not applied.

NOTE: Even if the offender sought nighttime, the moment the scene of the crime has been illuminated by any light, nighttime will not be considered as an aggravating circumstance.

Reasons why night time is considered aggravating

1. During night time, recognition of the accused is more difficult.
2. Harder for the victim to defend himself.
3. Night time provides security for the accused.
4. Mere presence of darkness gives others anxiety or fear.

Rule in the appreciation of nighttime and treachery in the commission of a crime

GR: Night time is absorbed in treachery

XPN: Where both the treacherous mode of attack and nocturnity were deliberately decided upon, they can be considered separately if such circumstances have different factual bases.

Uninhabited place

It is where there are no houses at all, a place at a considerable distance from town or where the houses are scattered at a great distance from each other. It is not determined by the distance of the nearest house to the scene of the crime but whether or not in the place of the commission of the offense there was a reasonable possibility of the victim receiving some help.

Instances when uninhabited place is aggravating



To be aggravating, it is necessary that the offender took advantage of the place and purposely availed of it as to make it easier to commit the crime. The offender must choose the place as an aid either:

1. To an easy and uninterrupted accomplishment of their criminal designs; or
2. To insure concealment of the offense.

Band

It means that there are at least four armed malefactors acting together in the commission of the offense.

NOTE: All must be armed, otherwise, the aggravating circumstance under Art. 14(8) shall apply.

The RPC does not require any particular arms or weapons, so any instrument or implement which, by reason of intrinsic nature or the purpose for which it was made or used by the accused, is capable of inflicting serious injuries.

NOTE: If the group of two or more persons falls under the definition of an organized or syndicated crime group under Art. 62, it is a special aggravating circumstance

Applicability of band as an aggravating circumstance:

1. The aggravating circumstance of *by a band* is considered in crimes against property and in crimes against persons only.
NOTE: This aggravating circumstance is not applicable in crimes against chastity.
2. Inherent in brigandage (not considered as an aggravating circumstance)
3. Abuse of superior strength and use of firearms, absorbed in aggravating circumstance of “by a band”
4. All armed men must take a direct part in the execution of the act constituting the crime
NOTE: If one of the four armed persons is a principal by inducement, they do not form a band.

**ON OCCASION OF
CONFLAGRATIONSHIPWRECK, EARTHQUAKE,
EPIDEMIC OR
OTHER CALAMITY OR MISFORTUNE
ART. 14 (7), RPC**

Basis

The basis of this aggravating circumstance has reference to the time of the commission of the crime. The reason is the debased form of criminality met in one who, in the midst of a great calamity, instead of lending aid to the afflicted, adds to their suffering by taking advantage of their misfortune.

When considered as an aggravating circumstance

The crime is committed on the occasion of a conflagration, shipwreck, earthquake, epidemic or other calamity of misfortune and the offender takes advantage of it.

NOTE: *Calamity* or *misfortune* refers to other conditions of distress similar to the enumeration preceded by it.

**AID OF ARMED MEN
ART. 14 (8), RPC**

When circumstance is present

It is present when the crime to which it is attached to is committed with the aid of:

1. Armed men; or
2. Persons who insure or afford impunity

Requisites

1. That armed men or persons took part in the commission of the crime, directly or indirectly; and
2. That the accused availed himself of their aid or relied upon them when the crime is committed.

NOTE: Arms is not limited to firearms. Bolos, knives, sticks and stones are included. Aid of armed men includes armed women.

Circumstances when aid of armed men is not considered as an aggravating circumstance

1. When both the attacking party and the party attacked were equally armed;
2. When the accused as well as those who cooperated with him in the commission of the crime acted under the same plan and for the same purpose; and
3. The casual presence of the armed men near the place where the crime was committed when the accused did not avail himself of their aid or relied upon them to commit the crime.

Q: What aggravating circumstance will be considered if there are four armed men?

A: If there are four armed men, aid of armed men is absorbed in employment of a band. If there are three armed men or less, aid of armed men may be the aggravating circumstance.

Crime committed by a band under paragraph 6 vis-à-vis Crime committed with the aid of armed men under paragraph 8

BY BAND (PAR. 6)	WITH THE AID OF ARMED MEN (PAR. 8)
Requires more than three people.	At least two armed malefactors.
At least four malefactors shall have acted together in the commission of an offense.	This circumstance is present even if one of the offenders merely relied on their aid, actual aid is not necessary.
Band members are all principals.	Armed men are mere accomplices.

**RECIDIVISM
ART. 14 (9), RPC**

Recidivist

A recidivist is one who, at the time of his trial for one crime shall have been previously convicted by final judgment of another crime embraced in the same title of the Revised Penal Code.

Ratio

The law considers this aggravating circumstance because when a person has been committing felonies embraced in the same title, the

implication is that he is specializing on such kind of crime and the law wants to prevent any specialization.

Requisites

1. That the offender is on trial for an offense;
2. He was previously convicted by final judgment of another crime;
3. Both the first and second offense are embraced in the same title of the RPC; and
4. Offender is convicted of the new offense.

Effect of recidivism in the application of penalties

GR: Being an ordinary aggravating circumstance, recidivism affects only the periods of a penalty.

XPN: In prostitution (*Art. 202, as amended by RA10158*), and gambling, (*PD 1602, which repealed Art. 192 of the Code*) wherein recidivism increases the penalties by degrees.

"At the time of his trial for one crime"

It is employed in its generic sense, including the rendition of judgment. It is meant to include everything that is done in the course of the trial, from arraignment until after sentence is announced by the judge in open court.

Q: Suppose, the first offense in 1975 was homicide, then the second offense in 2004 was murder. Can aggravating circumstance of recidivism be appreciated?

A: YES, because homicide and murder are crimes both under crimes against persons, hence both crimes are embraced in the same title of the RPC.

Necessity of conviction to come in the order in which they are convicted

There is no recidivism if the subsequent conviction is for an offense committed prior to the offense involved in the previous conviction.

Example: The accused was convicted of robbery with homicide committed December 23, 1947. He was *previously* convicted of theft committed on December 30, 1947.

NOTE: If both offenses were committed on the same date, they shall be considered as only one; hence they cannot be separately counted in order



to constitute recidivism. Also, judgments of conviction handed down on the same day shall be considered as only one conviction.

Effect of pardon to recidivism

GR: Pardon does not obliterate recidivism, even if it is absolute because it only excuses the service of the penalty, not the conviction.

XPN: If the offender had already served out his sentence and was subsequently extended pardon.

NOTE: If the President extends pardon to someone who already served out the principal penalty, there is a presumed intention to remove recidivism.

Effect of amnesty to recidivism

Amnesty extinguishes the penalty and its effects, thus it obliterates recidivism.

Recidivism not subject to prescription

No matter how long ago the offender was convicted, if he is subsequently convicted of a crime embraced in the same title of the RPC, it is taken into account as aggravating in imposing the penalty (*People v. Colocar, G.R. No. 40871, November 10, 1934*).

**REITERACION
ART. 14 (10), RPC**

Basis

The greater perversity of the offender as shown by his inclination to commit crimes.

Requisites

1. That the accused is on trial for an offense;
2. That the previously served his sentence for another crime to which the law attaches an equal or greater penalty, or for two or more crimes to which it attaches lighter penalty than that for the new offense; and
3. That he is convicted of the new offense.

NOTE: It is the penalty attached to the offense, not the penalty actually imposed that is actually considered.

Reiteracion vis-à-vis Recidivism

REITERACION	RECIDIVISM
It is necessary that the offender shall have served out his sentence for his first offense.	It is enough that a final judgment has been rendered in the first offense.
Previous and subsequent offenses must not be embraced in the same title of the RPC.	Offenses should be included in the same title of the RPC.

**IN CONSIDERATION OF A PRICE
REWARD OR PROMISE
ART. 14 (11), RPC**

Basis

The greater perversity of the offender, as shown by the motivating power itself.

Requisites of “in consideration of a price, reward, or promise”

1. There are at least two principals
 1. Principal by inducement
 2. Principal by direct participation; and
2. The price, reward, or promise should be previous to and in consideration of the commission of the criminal act.

NOTE: The price, reward or promise need not consist of or refer to material things, or that the same were actually delivered, it being sufficient that the offer made by the principal by inducement be accepted by the principal by direct participation before the commission of the offense.

Appreciation

It is appreciated against both the principal by inducement and principal by direct participation.

Effect on criminal liability of the one giving the offer

This aggravating circumstance affects or aggravates not only the criminal liability of the receiver of the price, reward or promise but also the criminal liability of the one giving the offer.

To consider this circumstance, the price, reward, or promise must be the primary reason or the primordial motive for the commission of the crime.

Illustration: If A approached B and asked the latter what he thought of X, and B answered "he is a bad man" to which A retorted, "you see I am going to kill him this afternoon". And so, B told him, "if you do that I'll give you P5,000.00" and after killing X, A again approached B, told him he had already killed X, and B in compliance with his promise, delivered the P5,000.00. In this case, the aggravating circumstance is not present.

**BY MEANS OF INUNDATION, FIRE,
EXPLOSION, POISON, ETC.
ART. 14 (12), RPC**

Aggravating circumstances under this paragraph

If the crime be committed by means of:

1. Inundation;
2. Fire;
3. Explosion;
4. Poison;
5. Stranding of the vessel or intentional damage thereto;
6. Derailment of locomotion; or
7. By use of any other artifice involving great waste and ruin.

NOTE: Any of these circumstances cannot be considered to increase the penalty or to change the nature of the offense, unless used by the offender as means to accomplish a criminal purpose.

It is also not aggravating when the law in defining the crime includes them. (*E.g.* Fire is not aggravating in the crime of arson.)

Rules as to the use of fire

1. *Intent was only to burn but somebody died* – The crime is arson, the penalty is higher because somebody died.
2. *If fire was used as means to kill* – the crime is murder not arson and fire cannot be appreciated as aggravating circumstance.
3. *There was an intention to kill and fire was used to conceal the crime*– there are two separate crimes: arson and murder.

**EVIDENT PREMEDITATION
ART. 14 (13), RPC**

Basis

The basis has reference to the ways of committing the crime.

Essence

The essence of evident premeditation is that the execution of the criminal act must be preceded by cool thought and upon reflection to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment.

NOTE: Evident premeditation is appreciated only in crimes against persons.

Requisites

1. *Determination* – the time when the offender determined to commit the crime;
2. *Preparation* – an act manifestly indicating that the culprit has clung to his determination; and
3. *Time* – a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will.

Reason for requiring sufficient time

The offender must have an opportunity to coolly and serenely think and deliberate on the meaning and the consequences of what he planned to do, an interval long enough for his conscience and better judgment to overcome his evil desire.

NOTE: Evident premeditation is absorbed in treachery.

Appreciation of evident premeditation in *error in personae* and *aberratio ictus*

GR: Evident premeditation is not appreciated in *error in personae* and *aberratio ictus*.

NOTE: However, it is not necessary to have the intent to kill a *particular person*.

XPNS:

1. When there is no particular intended victim or particular person to kill; and

2. Where the victim belonged to the same class or family designated by the accused.

Conspiracy presupposes premeditation

GR: Conspiracy generally denotes premeditation.

XPN: In implied conspiracy, evident premeditation may not be appreciated, in the absence of proof as to how and when the plan to kill the victim was hatched or what time had elapsed before it was carried out.

**CRAFT, FRAUD, OR DISGUISE
ART. 14 (14), RPC**

Appreciation

To be appreciated, these circumstances must have facilitated or be taken advantage of by the offender in the commission of a crime.

NOTE: According to *Justice Regalado*, the fine distinctions between craft and fraud would not really be called for as these terms in Art. 14 are variants of means employed to deceive the victim and if all are present in the same case; they shall be applied as a single aggravating circumstance.

Craft

Craft involves intellectual trickery and cunning on the part of the accused in order not to arouse the suspicion of the victim.

Fraud

Fraud refers to the insidious words or machinations used to induce the victim to act in a manner which enables the offender to carry out his design.

Craft and fraud may be absorbed in treachery if they have been deliberately adopted as means, methods or forms for the treacherous strategy, or they may co-exist independently where they are adopted for a different purpose in the commission of the crime.

Disguise

Disguise means resorting to any device to conceal identity.

NOTE: The test of disguise is whether the device or contrivance, or even the assumed name resorted to by the offender was intended to make identification more difficult.

Necessity that the accused be able to hide his identity all throughout the commission of the crime

It is not necessary that the accused be able to hide his identity all throughout the commission of the crime. The accused must be able to hide his identity during the initial stage if not all throughout the commission of the crime and his identity must have been discovered only later on to consider this aggravating circumstance.

Test in order to determine if disguise exists

Whether the device or contrivance resorted to by the offender was intended to or did make identification more difficult, such as the use of a mask or false hair or beard. If in spite of the disguise, the offender was recognized, disguise cannot be appreciated as an aggravating circumstance.

Craft, Fraud and Disguise distinguished

CRAFT	FRAUD	DISGUISE
Involves the use of intellectual trickery and cunning not to arouse the suspicion of the victim.	Involves the use of direct inducement by insidious words or machinations.	Involves the use of device to conceal identity.

**ABUSE OF SUPERIOR STRENGTH OR MEANS
EMPLOYED TO WEAKEN THE DEFENSE
ART. 14 (15), RPC**

Abuse of superior strength

It is the use of purposely excessive force out of proportion with the means of defense available to the person attacked.

Requisites of abuse of superior strength

1. That there be notorious inequality of forces between the offender and the

offended party in terms of their age, size, and strength

2. That the offender took advantage of this inequality of forces to facilitate the commission of the crime

Abuse of superior strength considered as aggravating

The aggravating circumstance of abuse of superior strength depends on the age, size, and strength of the parties. It is considered whenever there is a notorious inequality of forces between the victim and the aggressor.

NOTE: For abuse of superior strength, the test is the relative strength of the offender and his victim, and whether or not he took advantage of his greater strength. Superiority in number does not necessarily mean superiority in strength. The accused must have cooperated and intended to use or secure advantage from their superiority in strength (*People v. Basas, G.R. No. L-34251, January 30, 1982*).

Determination of the presence of abuse of superiority

Abuse of superiority is determined by the excess of the aggressor's natural strength over that of the victim, considering the position of both and the employment of means to weaken the defense, although not annulling it. The aggressor must have taken advantage of his natural strength to insure the commission of the crime (*People v. Salcedo, G.R. No. 178272, March 14, 2011*).

Q: Alberto Berbon was shot in the head and different parts of the body in front of his house by unidentified malefactors who immediately fled the crime scene on board a waiting car. Reyes confided to the law enforcers that he was willing to give vital information regarding the Berbon case. Reyes claimed that on December 15, 1996, he saw petitioner and Sotero Paredes (Paredes) board a red car while armed with a .45 caliber firearm and armalite, respectively; and that petitioner told Paredes that "ayaw ko na ng abutin pa ng bukas yang siBerbon." Are the qualifying circumstances of abuse of superior strength and nighttime present in this case?

A: NO. The petitioner is guilty only of the crime of homicide in view of the prosecution's failure to

prove any of the alleged attendant circumstances of abuse of superior strength and nighttime. The circumstance of abuse of superior strength is present whenever there is inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor, and the latter takes advantage of it in the commission of the crime. However, as none of the prosecution witnesses saw how the killing was perpetrated, abuse of superior strength cannot be appreciated in this case. Neither can nighttime serve as an aggravating circumstance, the time of the commission of the crime was not even alleged in the Information. (*JOSE ESPINELLI VS. PEOPLE OF THE PHILIPPINES, June 09, 2014*)

"Means to weaken defense"

It exists when the offended party's resisting power is materially weakened.

NOTE: Means to weaken the defense may be absorbed in treachery. E.g. When the accused throws a sand directly into the eyes of his victim, this has the effect of weakening the defense of his victim as well as insuring the execution of his act without risk to himself. In this case, only one aggravating circumstance will be appreciated, namely treachery, and the circumstance of means to weaken the defense will already be absorbed.

Requisites of means to weaken defense

1. Means were purposely sought to weaken the defense of the victim to resist the assault
2. The means used must not totally eliminate possible defense of the victim, otherwise, it will fall under treachery.

TREACHERY ART. 15 (16), RPC

Basis

The means and ways employed in the commission of the crime.

Treachery

Treachery (*aleviosa*) refers to the employment of means, method, or form in the commission of the crime against persons which tend directly and specially to insure its execution without risk to



himself arising from the defense which the offended party might make.

Essence

The essence of the qualifying circumstance is the suddenness, surprise and the lack of expectation that the attack will take place, thus, depriving the victim of any real opportunity for self-defense while ensuring the commission of the crime without risk to the aggressor. Likewise, even when the victim was forewarned of the danger to his person, treachery may still be appreciated since what is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate (*People v. Villacorta, G.R. No. 186412, September 7, 2011*).

Elements of treachery

1. The employment of means of execution that would insure the safety of the accused from retaliatory acts of the intended victim and leaving the latter without an opportunity to defend himself; and
2. The means employed were deliberately or consciously adopted by the offender (*People v. Nelmida, et al, G.R. No. 184500, September 11, 2012*).

Test of treachery

The test of treachery is not only the relative position of the parties but more specifically whether or not the victim was forewarned or afforded the opportunity to make a defense or to ward off the attack.

Rules regarding treachery

1. Applicable only to crimes against persons.
2. Means, methods, or forms insure its execution but need not insure accomplishment of crime.
3. The mode of attack must be thought of by the offender, and must not spring from the unexpected turns of events hence not applicable when the attack is incidental or accidental.

Frontal attack does not negate the presence of treachery

Although frontal, if the attack was unexpected, and the unarmed victim was in no position to repel the

attack, treachery can still be appreciated (*People v. Pelis, G.R. No. 189328, February 21, 2011*).

Q:LUCERO called out Edgar and pleaded that he be allowed to go with Edgar because he was being pursued. Aydaon agreed and was suddenly hacked by LUCERO on the left side of his head causing his death. Thus, LUCERO was charged with the crime of murder aggravated by treachery. Is the aggravating circumstance of treachery present despite the attack being frontal?

A:The aggravating circumstance of treachery is present. The settled rule is that treachery can exist even if the attack is frontal, as long as the attack is sudden and unexpected, giving the victim no opportunity to repel it or to defend himself. What is decisive is that the execution of the attack, without the slightest provocation from an unarmed victim, made it impossible for the victim to defend himself or to retaliate. (**PEOPLE VS. LUCERO, 2010**)

In the spur of the moment

There is no treachery if the attack was made at the spur of the moment.

Appreciation of treachery in error in personae and aberratio ictus

Treachery is appreciated in error *in personae* and *aberratio ictus*, provided that the offender consciously employed treacherous means to insure the execution of the crime and to render the victim defenseless.

Appreciation of both evident premeditation and treachery

Evident premeditation and treachery can co-exist because evident premeditation refers to the commission of the crime while treachery refers to the manner employed by the offender in committing the crime.

Appreciation of treachery in robbery with homicide

Treachery can be appreciated in Robbery with homicide even though it is a crime against property because one of its components is a crime against person.

Instances that may be absorbed by treachery

1. Abuse of superior strength
2. Aid of armed men
3. By a band
4. Means to weaken the defense
5. Craft
6. Night time

Time when the element of treachery must be present

1. *When the aggression is continuous* -treachery must be present at the beginning of the assault.
2. *When the assault was not continuous* - it is sufficient that treachery was present when the fatal blow was given.

Q: A followed the unsuspecting victim, B when he was going home and thereafter, deliberately stabbed him in the back which resulted in B falling to the ground and was thereby further attacked by A. Was there treachery?

A: YES. B was defenseless and he was not given the opportunity to resist the attack or defend himself. A employed means which insured the killing of B and such means assured him from the risk of B's defense. Stabbing from behind is a good indication of treachery (*People v. Yanson, G.R. No. 179195, October 3, 2011*).

Note: Treachery CANNOT co-exist with passion or obfuscation, for while in mitigating circumstance of passion or obfuscation, the offender loses his reason and self-control, in the aggravating circumstance of treachery the mode of attack must be consciously adopted. One who loses his reason and self-control could not deliberately employ a particular means, method or form of attack in execution of crime.

Q: Several witnesses saw Camposano and De Los Reyes chasing Ilao and when he fell on the ground, appellants took turns in stabbing him with a deadly weapon. Camposano and De Los Reyes argues that their guilt is not established beyond reasonable doubt since that the testimonies of the witnesses for the prosecution did not dovetail in all particulars: the weapon used, relative position of appellants when they inflicted the mortal stab wound/s and who between the appellants was

first to inflict the stab wound. Is their contention meritorious?

A: The alleged inconsistencies in the witnesses' testimonies, if they be such at all, referred merely to minor and inconsequential details, which did not at all affect the substance of their testimonies, much less impair their credibility. In the ultimate analysis, what really matters in this case is that the prosecution witnesses did in fact see that it was the appellants who assaulted and killed Ilao that tragic morning. (*People vs. Camposano and De los reyes, G.R. No. 207659, April 20, 2016*)

**IGNOMINY
ART. 14 (17), RPC****Ignominy**

It pertains to the moral order, which adds disgrace to the material injury caused by the crime. Ignominy adds insult to injury or adds shame to the natural effects of the crime. Ignominy shocks the moral conscience of man.

Application

Ignominy is applicable in:

- a. Crimes against chastity,
- b. Less serious physical injuries,
- c. Light or grave coercion; and
- d. Murder.

No ignominy when a man is killed in the presence of his wife

The circumstance of ignominy will not be appreciated if the offender employed no means nor did any circumstance surround the act tending to make the effects of the crime more humiliating.

Ignominy when a woman is raped in the presence of his husband

Ignominy can be appreciated. Rape is now a crime against persons (*RA 8353*). Presence of the husband qualifies the crime of rape under Art. 266.



**UNLAWFUL ENTRY
ART. 14 (18), RPC**

Unlawful entry

Unlawful entry is aggravating when one who acts, not respecting the walls erected by men to guard their property and provided for their personal safety, shows greater perversity, a greater audacity and hence the law punishes him with more severity.

There is unlawful entry when an entrance is effected by a way not intended for the purpose.

NOTE: This circumstance is inherent in the crimes of trespass to dwelling and robbery with force upon things. But it is aggravating in the crime of robbery with violence against or intimidation of persons.

**BREAKING WALL
ART. 14 (19), RPC**

Requisites

1. A wall, roof, window, or door was broken
2. They were broken to effect entrance

It is aggravating only where the offender resorted to any of said means to enter the house.

Instances where breaking is lawful

1. An officer, in order to make an arrest, may break open door or window of any building in which the person to be arrested is or is reasonably believed to be (*Sec. 11, Rule 133 of Rules of Court*);
2. An officer, if refused admittance, may break open any door or window to execute the search warrant or liberate himself (*Sec. 7, Rule 126 of Rules of Court*); and
3. Replevin (*Sec. 4, Rule 60 of Rules of Court*).

Breaking wall vis-à-vis Unlawful entry

BREAKING WALL	UNLAWFUL ENTRY
It involves the breaking of the enumerated parts of the house.	It presupposes that there is no such breaking as by entry through the window.

**AID OF MINORS OR USE OF MOTOR VEHICLES
OR OTHER SIMILAR MEANS**

ART. 14 (20), RPC

Aid of minors

The use of a minor in the commission of the crime shows the greater perversity of the offender because he is educating the innocent minor in committing a crime. It is intended to discourage the exploitation of minors by criminals taking advantage of their irresponsibility and the leniency of the law for the youthful offender.

Use of motor vehicle considered

The use of motor vehicles in the commission of a crime poses difficulties to the authorities in apprehending the offenders. This circumstance is aggravating only when used to facilitate the commission of the offense.

NOTE: If motor vehicle is used only in the escape of the offender, motor vehicle is not aggravating as the law says that "the crime was committed by means of motor vehicle."

"Other similar means"

It should be understood as referring to motorized vehicles or other efficient means of transportation similar to automobile or airplane.

**CRUELTY
ART. 14 (21), RPC**

Cruelty

There is cruelty when the wrong done was intended to prolong the suffering of the victim, causing him unnecessary moral and physical pain.

NOTE: The basis of this aggravating circumstance is the means and ways employed in the commission of the crime.

Requisites

1. That at the time of the infliction of the physical pain, the offended party is still alive.
2. That the offender enjoys and delights in seeing his victim suffer gradually by the infliction of the physical pain.

Cruelty not inherent in crimes against persons

In order for it to be appreciated, there must be positive proof that the wounds found on the body of the victim were inflicted while he was still alive to unnecessarily prolong physical suffering.

NOTE: In mutilation, outraging of a corpse is considered as an aggravating circumstance. If the victim was already dead when the acts of mutilation were being performed, this would qualify the killing to murder due to outraging of his corpse.

Ignominy vis-à-vis Cruelty

IGNOMINY	CRUELTY
Ignominy refers to the moral effect of a crime and it pertains to the moral order, whether or not the victim is dead or alive.	Cruelty refers to the physical suffering of the victim purposely intended by the offender.

Other special aggravating circumstances

1. Organized or syndicated crime group;
2. Under influence of dangerous drugs; and
3. Use of unlicensed firearm.

USE OF LOOSE FIREARMS UNDER RA 10591 AND USE OF EXPLOSIVES UNDER RA 8294 AS AGGRAVATING CIRCUMSTANCE

NOTE: PD 1866 (*as amended by RA 8294*) has been superseded by the new Firearms law (*RA 10591*).

Loose firearm

Loose firearm refers to an unregistered firearm, an obliterated or altered firearm, firearm which has been lost or stolen, illegally manufactured firearms, registered firearms in the possession of an individual other than the licensee and those with revoked licenses in accordance with the rules and regulations (*par. (v), Sec. 3, RA 10591*).

Use of loose firearm considered absorbed as an element of the crime of rebellion, insurrection or attempted coup d'etat

If the use of loose firearm is in furtherance of or incident to, or in connection with the crime of:

1. rebellion
2. insurrection;

3. or attempted coup d'etat such shall be absorbed as an element of the crimes mentioned (*par. 2, Sec. 29, RA 10591*).

Use of Loose Firearm when inherent in the commission of the crime considered as an aggravating circumstance

The use of a loose firearm, when inherent in the commission of a crime punishable under the Revised Penal Code or other special laws, shall be considered as an aggravating circumstance (*par. 1, Sec 29, RA 10591*).

NOTE: If the crime committed with the use of a loose firearm is penalized by the law with a maximum penalty which is lower than that prescribed in the preceding section for illegal possession of firearm, the penalty for the crime charged: Provided further, that if the crime committed with the use of loose firearm is penalized by the law with a maximum penalty of prision mayor in its minimum period punishable under the Revised Penal Code or other special laws of which he/she is found guilty.

Q: If an unlicensed firearm was used to kill a person, can he be held guilty for a separate offense of illegal possession of firearms aside from murder or homicide?

A: NO. Where murder or homicide results from the use of an unlicensed firearm, the crime is no longer qualified illegal possession, but murder or homicide, as the case may be. In such a case, the use of the unlicensed firearm is not considered as a separate crime but shall be appreciated as an aggravating circumstance. (*People v. Avecilla, G.R. No. 117033, February 15, 2001*).

NOTE: Same ruling will be applicable in the new Firearms law.

Use of Explosives

When a person commits any of the crimes defined in the RPC or special laws with the use of hand grenade(s), rifle grenade(s), and other explosives, including but not limited to 'pillbox,' 'molotov cocktail bombs,' 'fire bombs,' or other incendiary devices capable of producing destructive effect on contiguous objects or causing injury or death to any person, which results in the death of any person or persons, the use of such explosives, detonation agents or incendiary devices shall be



considered as an **aggravating circumstance** (Sec. 2, RA 8294).

Necessity to present the firearm to consider illegal possession of firearm as an aggravating circumstance

It is not necessary to present the firearm before the court in order for illegal possession of firearm to be appreciated as an aggravating circumstance. It can be appreciated even though the firearm used was not recovered. The actual firearm itself need not be presented if its existence can be proved by the testimonies of witnesses or by other evidence presented (*People v. Agcanas*, G.R. No. 174476, October 11, 2011).

Instances required to be proven in cases of illegal possession of firearms

In crimes involving illegal possession of firearm, the prosecution has the burden of proving the elements thereof, *viz*:

- (a) The existence of the subject firearm; and
- (b) The fact that the accused who owned or possessed it does not have the license or permit to possess the same. The essence of the crime of illegal possession is the possession, whether actual or constructive, of the subject firearm, without which there can be no conviction for illegal possession.

After possession is established by the prosecution, it would only be a matter of course to determine whether the accused has a license to possess the firearm. Possession of any firearm becomes unlawful only if the necessary permit or license is not first obtained. The absence of license and legal authority constitutes an essential ingredient of the offense of illegal possession of firearm and every ingredient or essential element of an offense must be shown by the prosecution by proof beyond reasonable doubt (*People v. Agcanas*, G.R. No. 174476, October 11, 2011).

Good faith is not a valid defense against prosecution for illegal possession of firearm

Illegal Possession of Firearm is *malum prohibitum*.

Illustration: The accused was apprehended for carrying a cal. 9mm firearm and ammunitions without the proper license to possess the same. He claimed to be a confidential agent of the AFP and

in that capacity received the said firearm and ammunitions, which are government property duly licensed to the Intelligence Security Group (ISG) of the AFP and so could not be licensed under his name. Although the accused had a Memorandum Receipt and A Mission Order issued by ISG, whereby he was entrusted with such firearm and ammunitions which he was authorized to carry around, he was nevertheless convicted for the subject violation for a Memorandum Receipt and Mission Order cannot take the place of a duly issued firearm license. The accused cannot invoke good faith as a defense against a prosecution for illegal possession of firearm, as this is a *malum prohibitum* (*Sayco v. People*, G.R. 159703, March 3, 2008).

NOTE: If the crime is committed by the person without using the loose firearm, the violation of this Act shall be considered as a distinct and separate offense (*par. 3, Sec. 29, RA 10591*).

**USE OF DANGEROUS DRUGS
UNDER RA 9165 AS
QUALIFYING AGGRAVATING CIRCUMSTANCE**

Notwithstanding the provisions of any law to the contrary, a positive finding for the use of dangerous drugs shall be a **qualifying aggravating circumstance** in the commission of a crime by an offender, and the application of the penalty provided for in the Revised Penal Code shall be applicable (*Sec. 25, RA 9165*). **(BAR 2005, 2009)**

NOTE: The drug test in Section 15 does not cover persons apprehended or arrested for any unlawful acts listed under Article II of R.A. 9165. Thus, this qualifying aggravating circumstance shall be considered only to crimes punishable under RA 9165 (*Dela Cruz v. People*, GR 200748, July 23, 2004).

Other aggravating circumstances in drug related cases

1. If the importation or bringing into the Philippines of any dangerous drugs and/or controlled precursor and essential chemicals was done through the use of a diplomatic passport, diplomatic facilities or any other means involving his/her official status intended to facilitate the unlawful entry of the same (*par. 3, Sec. 4, RA 9165*).

2. If the sale trading, administration, dispensation, delivery, distribution or transportation of any dangerous and/or controlled precursor and essential chemical transpired within one hundred (100) meters from school (*par. 2, Sec. 5, RA 9165*).
3. For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drug and/or controlled precursor and essential chemical trade (*par. 3, Sec. 5, RA 9165*).
4. If the victim of the offense is a minor or mentally incapacitated individual, or should a dangerous drug and/or controlled precursor and essential chemicals involved in any offense be the proximate cause of the death of the victim (*par. 4, Sec. 5, RA 9165*).
5. In case the clandestine laboratory is undertaken or established under the following circumstances:
 - a. Any phase of the manufacturing process was conducted in the presence or with the help of minor/s;
 - b. Any phase of manufacturing process was established or undertaken within one hundred (100) meters of a residential, business, church or school premises;
 - c. Any clandestine laboratory was secured or protected by booby traps;
 - d. Any clandestine laboratory was concealed with legitimate business operations; or
 - e. Any employment of a practitioner, chemical engineer, public official or foreigner (*Sec. 8, RA 9165*).
6. In case the person uses a minor or a mentally incapacitated individual to deliver equipment, instrument, apparatus, and other paraphernalia for dangerous drugs (*par. 3, Sec. 10, RA 9165*).
7. Any person found possessing any dangerous drug during a party, or a social gathering or meeting, or in the proximate company of at least two (2) person (*Sec. 13, RA 9165*).
8. Possession or having under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting or introducing any dangerous drug into the body, during parties, social gatherings or meetings, or in the proximate company of at least two (2) persons (*Sec. 14, RA 9165*).

**IMMUNITY FROM PROSECUTION
AND PUNISHMENT UNDER RA 9165**

Requisites to be exempted from prosecution and punishment under RA 9165

Any person who:

1. Has violated *Section 7* (Employees and Visitors of a Den, Dive or Resort), *Section 11* (Possession of Dangerous Drugs), *Section 12* (Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drug), *Section 14* (Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs During Parties, Social Gatherings or Meetings), *Section 15* (Use of Dangerous Drugs), and *Section 19* (Unlawful Prescription of Dangerous Drugs), Article II of RA 9165
2. Voluntarily gives information about any violation of:
 - a. Importation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals (*Sec. 4, RA 9165*);
 - b. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals (*Sec. 5, RA 9165*);
 - c. Maintenance of a Den, Dive or Resort (*Sec. 6, RA 9165*);
 - d. Manufacture of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals (*Sec. 8, RA 9165*);
 - e. Manufacture or Delivery of Equipment, Instrument, Apparatus, and Other Paraphernalia for Dangerous Drugs and/or Controlled Precursors and Essential Chemicals (*Sec. 10, RA 9165*);
 - f. Possession of Dangerous Drugs During Parties, Social Gatherings or Meetings (*Sec. 13, RA 9165*);
 - g. Cultivation or Culture of Plants Classified as Dangerous Drugs or are Sources Thereof (*Sec. 16, RA 9165*);
 - h. The offenses mentioned if committed by a drug syndicate; or
 - i. Leading to the whereabouts, identities and arrest of all or any of the members thereof
3. Willingly testifies against such persons as described above.



Provided, that the following conditions concur:

- a. The information and testimony are necessary for the conviction of the persons described above;
- b. Such information and testimony are not yet in the possession of the State;
- c. Such information and testimony can be corroborated on its material points;
- d. The informant or witness has not been previously convicted of a crime involving moral turpitude, except when there is no other direct evidence available for the State other than the information and testimony of said informant or witness; and
- e. The informant or witness shall strictly and faithfully comply without delay, any condition or undertaking, reduced into writing, lawfully imposed by the State as further consideration for the grant of immunity from prosecution and punishment.

Provided, further, that this immunity may be enjoyed by such informant or witness who does not appear to be most guilty for the offense with reference to which his/her information or testimony were given.

Provided, finally, that there is no direct evidence available for the State except for the information and testimony of the said informant or witness.

NOTE: This applies notwithstanding the provisions of Section 17, Rule 119 of the Revised Rules of Criminal Procedure and the provisions of Republic Act No. 6981 or the Witness Protection, Security and Benefit Act of 1991.

Termination of immunity from prosecution and punishment

The immunity shall not attach should it turn out subsequently that the information and/or testimony is false, malicious or made only for the purpose of harassing, molesting or in any way prejudicing the persons described in Sec. 33 against whom such information or testimony is directed. In such case, the informant or witness shall be subject to prosecution and the enjoyment of all rights and benefits previously accorded him

under the Law or any other law, decree or order shall be deemed terminated.

In case the informant or witness under the Law fails or refuses to testify without just cause, and when lawfully obliged to do so, or should he/she violate any condition accompanying such immunity as provided above, his/her immunity shall be removed and he/she shall be likewise be subjected to contempt and/or criminal prosecution as the case may be and the enjoyment of all rights and benefits previously accorded him under the Law or in any other law, decree or order shall be deemed terminated (*RA 9165, Sec. 34*).

MINOR OFFENDERS UNDER RA 9165

Sec. 66, RA 9165 - An accused who is fifteen (15) years of age at the time of the commission of the offense mentioned in Sec. 11 of RA 9165 but not more than eighteen (18) years of age at the time of when the judgment should have been promulgated after having been found guilty of said offense, may be given the benefits of a suspended sentence, subject to the following conditions:

- a. He/she has not been previously convicted of violating any provisions of this Act, or of the Dangerous Drugs Act of 1972, as amended; or of the Revised Penal Code; or any special penal laws;
- b. He/she has not been previously committed to a Center or to the care of a DOH-accredited physician; and
- c. The Board favorably recommends that his/her sentence be suspended.

NOTE: If the first-time minor offender violates any of the conditions of his/her suspended sentence, the applicable rules and regulations of the Board exercising supervision and rehabilitative surveillance over him, including the rules and regulations of the Center should confinement be required, the court shall pronounce judgment of conviction and he/she shall serve sentence as any other convicted person (*RA 9165, Sec. 69*).

Grant of probation or community service in case of a first-time minor offender

The court may grant probation or community service in lieu of imprisonment in case of a first-time minor offender. Upon promulgation of the sentence, the court may, in its discretion, place the accused under probation, even if the sentence

provided under this Act is higher than that provided under existing law on probation or impose community service in lieu of imprisonment.

NOTE: If the sentence promulgated by the court requires imprisonment, the period spent in the Center by the accused shall be deducted from the sentence to be served (*Sec. 70, RA 9165*).

**APPLICATION/ NON-APPLICATION OF
RPC PROVISIONS (SEC. 98, RA 9165) ART. 10**

RPC applied with respect to special laws

RPC is not intended to supersede special laws. It shall be supplementary to special penal laws unless the latter should specially provide the contrary (*RPC, Art. 10*).

Provisions of the RPC not applicable to RA 9165

GR: The provisions of the RPC are not applicable to RA 9165 because the law itself prohibits the application of RPC to RA 9165.

XPN: If the offender is a minor. RA 9165 states that if the offender is a minor and the penalty is life imprisonment to death, then the penalty shall be *reclusion perpetua* to death, therefore, adopting the nomenclature of the penalties under the RPC. By adopting the nomenclature of the penalties under the RPC, the RPC shall apply, and a minor would now be entitled to a privileged mitigating circumstance of minority (*People v. Simon, G.R. No. 93026, July 29, 1994*).

**ALTERNATIVE CIRCUMSTANCES
ART. 15, RPC**

Alternative circumstances

Those circumstances which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and the other conditions attending its commission. These are: (**RIDE**)

1. Relationship;
2. Intoxication;
3. Degree of instruction and education of the offender.

**RELATIONSHIP
ART. 15 (2), RPC**

Relationship taken into consideration

When the offended party is the:

1. Spouse;
2. Ascendant;
3. Descendant;
4. Legitimate, natural, or adopted Brother or Sister;
5. Relative by affinity in the same degree of the offender; and
6. Other relatives included by Analogy to ascendants and descendants. *e.g.* Stepparents – It is their duty to bestow upon their stepchildren a mother/father's affection, care and protection.

Appreciation of relationship

1. **Exempting:**
 - a. In the case of an accessory who is related to the principal within the relationship prescribed in Article 20.
 - b. In Art. 247, a spouse will not incur criminal liability if less serious physical injuries or slight physical injuries was inflicted after having surprised his or her spouse or paramour or mistress committing actual sexual intercourse. The same shall apply to parents, with respect to their daughters under 18 years of age, and their seducer, while the daughter is living with their parents.
 - c. Under Art. 332, in the crime of theft, malicious mischief and swindling or *estafa*, there is no criminal liability if the offender is related to the offended party as:
 - i. Spouse, ascendant, or descendant, or relatives by affinity in the same line;

NOTE: Stepfather and stepmother are included as ascendants by affinity (*People v. Alvares, 52 Phil. 65*).

- ii. The widowed spouse with respect to the property which belonged to the deceased spouse before the same passed into the possession of another.
- iii. If the offender is a brother or sister or brother-in-law or sister-in-law of the



offended party and they are living together.

NOTE: Article 332 is exclusive; hence, if the crime is robbery, or estafa through falsification, this Article does not apply. If the son committed estafa through falsification of a commercial document against his father, he is criminally liable for the crime of falsification (*Reyes, 2012*).

The exemption does not include strangers who cooperate in the commission of the crime.

2. Mitigating:

- a. In crimes against property, by analogy to Art. 332 which exempts the accused from criminal liability for the crimes of theft, estafa and malicious mischief, relationship is mitigating in the crimes of Robbery (RPC, Arts. 294-302), Usurpation (Art. 312), fraudulent insolvency (Art. 314) and Arson (RPC, Arts 321-322, 325-326) (*Reyes, 2008*).
- b. In physical injuries, relationship is mitigating when the offense committed is less serious physical injuries or slight physical injuries, and the offended party is a relative of a lower degree (*Reyes, 2008*).
- c. In cases of infanticide (RPC, Art. 255) and abortion (RPC, Art. 258), the killing or abortion to conceal dishonor is a mitigating circumstance. In infanticide, the concealment made by the maternal grandparents is mitigating. (*Boado, 2008*).
- d. In trespass to dwelling (*U.S. v. Ostrea, G.R. No. 1114, March 31, 1903*).

3. Aggravating: (BAR 1994)

- a. In crimes against person
 - i. Where the offended party is a relative of a higher degree than the offender.
 - ii. When the offender and the offended party are relatives of the same level, such as killing a brother; (*El Pueblo de Filipinas v. Alisub, G.R. No. 46588, January 20, 1940*), brother-in-law (*People v. Mercado, G.R. No. 27415, November 29, 1927*), a half-brother (*People v. Nargatan, G.R. No. 24619-20, December 16, 1925*), or adopted-

brother (*People v. Mangcol, G.R. No. L-2544, June 30, 1950*).

- iii. In case of murder or homicide, if the act resulted in the death of the victim even if the accused is a relative of a lower degree
- iv. In rape, relationship is aggravating when a stepfather raped his stepdaughter (*People v. De Leon, G.R. No. 26867, August 10, 1927*) or in a case when a father raped his own daughter (*People v. Porras, G.R. No. 38107, October 16, 1933*).
- b. In physical injuries
 - i. *Serious physical injuries* – even if the offended party is a descendant of the offender; except when committed by the parent who shall inflict physical injuries to his child due to excessive chastisement.
 - ii. *Less serious physical injuries or slight physical injuries* – if the offended party is a relative of a higher degree of the offender

**INTOXICATION
ART. 15 (3), RPC**

Intoxication as an alternative circumstance

It is an alternative circumstance because it impairs the exercise of one's will-power. When a person is under the influence of liquor, his exercise of will power is impaired and his resistance to evil is lessened (*People v. Tambis, G.R. No. 124452, July 28, 1999*).

Intoxication considered mitigating (BAR 2000, 2002)

If intoxication is:

1. Not habitual;
2. Not subsequent to the plan to commit a felony; or
3. At the time of the commission of the crime, the accused has taken such quantity of alcoholic drinks as to blur his reason and deprive him of certain degree of control.

To be mitigating, the state of intoxication of the accused must be proved. Once intoxication is established by satisfactory evidence, in the

absence of proof to the contrary, it is presumed to be non-habitual or unintentional.

Intoxication considered aggravating

If intoxication is:

1. Habitual; or
2. Intentional (*subsequent to the plan to commit a felony*).

NOTE: The moment intoxication is shown to be habitual or intentional to the commission of the crime, the same will immediately aggravate, regardless of the crime committed.

In both circumstances, the liquor must be so intoxicating as to diminish a man's rational capacity.

Person considered as "habitual drunkard"

He is one given to intoxication by excessive use of intoxicating drinks. The habit should be actual and confirmed. It is unnecessary that it be a matter of daily occurrence. It lessens individual resistance to evil thought and undermines will-power making its victim a potential evildoer (*People v. Camano, G.R. No. L-36662-63, July 30, 1982*).

Basis of whether intoxication is mitigating or not

The basis is the effect of the alcohol upon the offender, not the quantity of the alcoholic drink he had taken in.

NOTE: Under **RA 9262** (Anti-Violence Against Women and Their Children Act of 2004), raising defenses as being under the influence of alcohol, any illicit drug or any other mind-altering substance shall not be appreciated (*Sec. 27, RA 9262*).

DEGREE OF INSTRUCTION AND EDUCATION

Appreciation of instruction or education

LACK OR LOW DEGREE OF INSTRUCTION AND EDUCATION	HIGH DEGREE OF INSTRUCTION AND EDUCATION
<p>GR: Lack or low degree of instruction is mitigating in all crimes.</p> <p>XPN: Not mitigating in:</p> <ol style="list-style-type: none"> 1. Crimes against property (<i>e.g. arson, estafa, threat</i>) 2. Theft and robbery (<i>People v. Macatanda, G.R. No. L-51368, November 6, 1981</i>) or assault upon the persons of another (<i>People v. Enot, G.R. No. L-17530, October 30, 1962</i>). 3. Crimes against chastity 4. Murder or homicide 5. Rape 6. Treason – because love of country should be a natural feeling of every citizen, however unlettered or uncultured he may be. (<i>People v. Lansanas, G.R. No. L-1622, December 2, 1948</i>) 	<p>High degree of instruction or education is aggravating when the offender avails himself of his learning in commission of the crimes.</p>

Test of Lack of Instruction as a mitigating circumstance is not illiteracy alone, but rather lack of sufficient intelligence.

NOTE: If the offender is a lawyer who committed rape, the fact that he has knowledge of the law will not aggravate his liability; But if a lawyer committed falsification, that will aggravate his criminal liability if it be proven that he used his special knowledge as a lawyer and he took advantage of his learning in committing the crime.

Degree of instruction and education are two distinct circumstances

One may not have any degree of instruction but is nevertheless educated.

Low degree of education is never aggravating in the manner that high degree is never mitigating.

ABSOLUTORY CAUSES



Absolutory causes

Absolutory causes are those where the act committed is a crime but for reasons of public policy and sentiment there is no penalty imposed.

Examples of absolutory causes

1. Spontaneous desistance in attempted felonies (*RPC, Art. 6, par. 3*).
 2. Light felonies in the attempted or frustrated stage, except in crimes against persons or property (*RPC, Art. 7*).
 3. Accessories in light felonies (*RPC, Art. 16*).
 4. Accessory is a relative of the principal, except when he has profited or assisted in profiting from the effects of the crime (*RPC, Art. 20*).
 5. Discovering secrets of ward through seizure of correspondence by their guardian (*RPC, Art. 290*).
 6. When only slight or less serious physical injuries are inflicted by the person who surprised his/her spouse or daughter in the act of sexual intercourse with another person (*RPC, Art. 247*).
- If death or serious physical injuries were inflicted by the accused under the situation subject of Art. 247, no absolutory cause can be involved but in effect a mitigating circumstance is present, since the accused is criminally liable but he is punished with the reduced penalty of *destierro*.
7. Crime of theft, swindling or malicious mischief committed against as spouse, ascendant, or descendant or if the offender is a brother or sister or brother-in-law or sister-in-law of the offended party and they are living together (*RPC, Art. 332*).
 8. Instigation
 9. Trespass to dwelling when the purpose of entering another's dwelling against the latter's will is to prevent some serious harm to himself, the occupants of the dwelling or a third person, or for the purposes of rendering some services to humanity or justice, or when entering cafes, taverns, inns and other public houses, while the same are open (*RPC, Art. 280, par. 2*).

Q: Are the grounds for total extinguishment of criminal liability (RPC, Art. 89) and express

pardon or marriage of the accused and the victim in crimes against chastity (RPC, Art. 344) absolutory causes?

A: NO. An absolutory cause prevents criminal liability from attaching or arising from the acts of the accused. Art. 89 which speaks of extinguishment of criminal liability presupposes that the accused was deemed criminally liable; otherwise there would be no liability to extinguish. The same is true with respect to marriage of the parties in crimes against chastity.

Instigation

Instigation happens when a public officer induces an innocent person to commit a crime and would arrest him upon or after the commission of the crime.

A private person is liable with the person instigated.

NOTE: In instigation, the offender simply acts as a tool of the law enforcers. Therefore, he is acting without criminal intent because without the instigation, he would not have done the criminal act which he did upon instigation of the law enforcers.

This is based on the rule that a person cannot be a criminal if his mind is not criminal.

Person who may commit instigation

Only public officers or private detectives may commit such. If the one who made the instigation is a private individual, not performing a public function, both he and the one induced are criminally liable, the former as principal by inducement and the latter as principal by direct participation.

Entrapment is not an absolutory cause

Entrapment is not an absolutory cause. Entrapment does not exempt the offender, nor mitigate his criminal liability.

Determination of whether the act is an entrapment or instigation

Courts have adopted the objective test. In the case of *People v. Doria*, the SC held that the conduct of

BASIS	ENTRAPMENT	INSTIGATION
As to intent	The criminal design originates from and is already in the mind of the lawbreaker even before entrapment.	The idea and design to bring about the commission of the crime originated and developed in the mind of the law enforcers.
Means and ways	The law enforcers resort to ways and means for the purpose of capturing the lawbreaker <i>in flagrante delicto</i> .	The law enforcers induce, lure, or incite a person who is not minded to commit a crime and would not otherwise commit it, into committing the crime.
As to criminal liability	The circumstance is no bar to prosecution and conviction of the lawbreaker.	This circumstance absolves the accused from criminal liability (<i>People v. Dante Marcos, G.R. No. 83325, May 8 1990</i>).

the apprehending officers and the predisposition of the accused to commit the crime must be examined:

In buy-bust operations, the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale.

The manner by which the initial contact was made - whether or not through an informant - the offer to purchase the drug - the payment of the "buy-bust" money - and the delivery of the illegal drug - whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to ensure that law-abiding citizens are not unlawfully induced to commit an offense.

Criminals must be caught but not at all cost. At the same time, however, examining the conduct of the police should not disable courts into ignoring the accused's predisposition to commit the crime. If there is overwhelming evidence of habitual

delinquency, recidivism or plain criminal proclivity, then this must also be considered. Courts should look at all factors to determine the predisposition of an accused to commit an offense in so far as they are relevant to determine the validity of the defense of inducement (*People v. Doria G.R. No. 131638-39, March 26, 2001*).

Frame-up and extortion as common defense, and the presumption of the regular performance of public officers

Such defense is viewed by the Court with disfavor, because it can be easily concocted. To substantiate such defense, including instigation, the evidence must be clear and convincing because of the presumption that public officers acted in the regular performance of their official duties (*People v. De la Pena, G.R. 92534, July 9, 1991*).

Entrapment vis-à-vis Instigation (BAR 1990, 1995, 2003)

PERSONS LIABLE AND DEGREE OF PARTICIPATION

PERSONS CRIMINALLY LIABLE ART. 16, RPC

Persons criminally liable

The following are criminally liable for grave and less grave felonies:

1. Principals;
2. Accomplices; and
3. Accessories.

For light felonies:

1. Principals
2. Accomplices

Light felonies are punishable in attempted and frustrated stage but only principal and accomplice are liable.

REASON: The social wrong as well as the individual prejudiced is so small that a penal sanction is deemed not necessary for accessories (*Reyes, 2012*).

This classification is true only under the RPC and is not used under special laws, because the penalties under special laws are never graduated.



However, if a special law provides for the same graduated penalties as those provided under the RPC, the classification under the RPC may be adopted.

Parties in the commission of a crime

1. Active subject (the criminal) – only natural persons can be the active subject of crime because of the highly personal nature of the criminal responsibility.
2. Passive subject (the injured party) – the holder of the injured right: natural person, juridical person, group and the State.

NOTE: Corpses and animals cannot be passive subjects because they have no rights that may be impaired, except, in the cases of corpses, the crime of defamation may be committed if the imputation tends to blacken the memory of one who is dead (*Art. 353, RPC*).

PRINCIPALS ART. 17, RPC

Different classifications of criminal responsibility

1. *Individual criminal responsibility* – When there is no conspiracy, each of the offenders is liable only for his personal act.
2. *Quasi-collective criminal responsibility* – Some offenders in the crime are principals and the others are accomplices.
3. *Collective criminal responsibility* – Where there is conspiracy, the act of one is the act of all. All conspirators are liable as co-principals regardless of the extent and character of their participation.

Kinds of principals

1. Principal by direct participation; (**BAR 1992, 1994, 2000, 2014**)
2. Principal by induction/inducement; and (**BAR 1994, 2002, 2003**)
3. Principal by indispensable cooperation (**BAR 2001, 2013, 2015**)

PRINCIPALS BY DIRECT PARTICIPATION

Principals by direct participation

Principals by direct participation are those who materially execute the crime. They appear at the

crime scene and perform acts necessary for the commission of the crime.

Requisites

1. They participated in the criminal resolution; and
2. They carried out the plan and personally took part in its execution by acts, which directly tended to the same end.

“Personally took part in the commission of the crime”

1. The principal by direct participation must be at the scene of the commission of the crime, personally taking part in its execution; and
2. If there is conspiracy, although he was not present in the scene of the crime, he is equally liable as a principal by direct participation.

A conspirator who does not appear at the scene of the crime is not liable. His non-appearance is deemed a desistance on his part unless he is the mastermind.

Liability of conspirators for another conspirator's acts which differ radically and substantially from that which intended to commit

Conspirators are liable for the acts of another conspirator even though such acts differ radically and substantially from that which they intend to commit.

Liability of conspirators for another's killing which is not covered in the conspiracy

When the conspirators select a particular individual to be a victim, and another person was killed by one of them, only that conspirator who killed another person would be liable.

PRINCIPALS BY INDUCEMENT

Principal by inducement

Principals by inducement are those who directly force or induce another to commit a crime. To be a principal by inducement, it is necessary that the inducement be the determining cause of the commission of the crime by the principal by direct participation that is, without such, the crime would not have been committed.

Requisites

1. That the inducement be made directly with the intention of procuring the commission of the crime; and
2. That the inducement be the determining cause of the commission of the crime by the material executor.

The inducement should precede the commission of the crime.

Q: A induced B to kill X by giving him Php 500, 000. For his part, B induced C to kill for Php300, 000. C induced D to kill X for Php200, 000. D killed X. Are A, B and C principals by inducement?

A: A and B are not principals by inducement because they did not directly induce D to kill X. However, C is a principal by inducement because he directly induced D to kill X.

NOTE:Inducement must be strong enough that the person induced could hardly resist. This is tantamount to an irresistible force compelling the person induced to carry out the execution of the crime. Thoughtless expression without intention to produce the result is not an inducement to commit a crime.

Ways of becoming a principal by inducement

1. Directly **forcing** another to commit a crime by:
 - a. *Using irresistible force* – such physical force that would produce an effect upon the individual that in spite of all resistance, it reduces him to a mere instrument.
 - b. *Causing uncontrollable fear* – compulsion by means of intimidation or threat that promises an evil of such gravity and eminence that the ordinary man would have succumbed to it.

NOTE: Only the one using force or causing fear is criminally liable. The material executor is not criminally liable because of exempting circumstances of irresistible force and uncontrollable fear under par. 5 & 6 of Art. 12.

2. Directly **inducing** another to commit a crime by:

- a. *Giving price, offering, reward or promise*

Requisites:

- i. Inducement must be made directly with the intention of procuring the commission of the crime;
- ii. Such inducement be the determining cause of the commission of the crime by the material executor.

- b. *By using words of commands*

Requisites:

- i. The one uttering the words of command must have the intention of procuring the commission of the crime;
- ii. He must have an ascendancy or influence over the person who acted;
- iii. Words used must be so direct, so efficacious, and powerful as to amount to physical or moral coercion;
- iv. Words of command must be uttered prior to the commission of the crime;
- v. Material executor of the crime has no personal reason to commit the crime.

NOTE: The one who used the words of command is a principal by inducement; while the one committing the crime because of the words of command is a principal by direct participation. There is a collective criminal responsibility.

Extent of inducement for a person to be held liable as principal by inducement

The inducement must be “so influential in producing the criminal act that without it, the act would not have been performed.” In *People v. Sanchez, et al.*, the Court ruled that, notwithstanding the fact that Mayor Sanchez was not at the crime scene, evidence proved that he was the mastermind of the criminal act or the principal by inducement. Thus, because Mayor Sanchez was a co-principal and co-conspirator, and because the act of one conspirator is the act of all, the mayor was rendered liable for all the

resulting crimes (*People v. Janjalani et. al., G.R. No. 188314, January 10, 2011*).

Illustrative case of principal by inducement by using words of command

1. In a prosecution for falsification of public documents by “causing it to appear that persons participated in an act or a proceeding when they did not in fact so participate”, *Lt. Guillergan* ordered Technical Sergeant Butcon to sign the “received” portion of the payrolls as payee to make it appear that persons whose names appeared on the same had signed the document when they in fact did not (*Guillergan v. People, G.R. 185493, February 2, 2011*).
2. A married woman suggested to her paramour, with whom she had been maintaining illicit relations to kill her husband. After killing the husband, the guilty parties immediately escaped and lived together as husband and wife until the time of their arrest (*U.S. v. Indanan, G.R. No. 8187, January 29, 1913*).

Q: A asked B to kill C because of grave injustice done to A by C. A promised B a reward. B was willing to kill C, not so much because of the reward promised to him but because he also had his own long-standing grudge against C, who had wronged him in the past. If C is killed by B, would A be liable as a principal by inducement? (BAR 2002)

A: NO, A would not be liable as principal by inducement because the reward he promised B is not the sole impelling reason which made B to kill C. To bring about criminal liability of a co-principal, the inducement made by the inducer must be the sole consideration which caused the person induced to commit the crime and without which the crime would not have been committed. The facts of the case indicate that B, the killer supposedly induced by A, had his own reason to kill C out of a long-standing grudge.

Q: While in training, Asali and others were told that their mission was to plant bombs in malls, the LRT, and other parts of Metro Manila. Rohmat called Asali to confirm that Trinidad would get two kilos of TNT from him, as they were “about to commence” their “first mission.” They made two separate attempts to bomb a bus in Metro Manila, but to no avail. The day before the Valentine’s Day

bombing, Trinidad got another two kilos of TNT from Asali. On Valentine’s Day, the Abu Sayyaf Group announced that they had a gift for the former President, Gloria Macapagal-Arroyo. On their third try, their plan finally succeeded. Right after the bomb exploded, the Abu Sayyaf Group declared that there would be more bombings in the future. Asali then received a call from Rohmat, praising the former: “Sa wakas nag success din yung tinuro ko sayo”. What is the liability of Rohmat?

A: Rohmat is criminally responsible as “principal by inducement.” The instructions and training he had given Asali on how to make bombs – coupled with their careful planning and persistent attempts to bomb different areas in Metro Manila and Rohmat’s confirmation that Trinidad would be getting TNT from Asali as part of their mission – prove the finding that Rohmat’s co-inducement was the determining cause of the commission of the crime. Such “command or advice [was] of such nature that, without it, the crime would not have materialized” (*People v. Janjalani et. al, G.R. No. 188314, January 10, 2011*).

Q: Marivic confided to her friend Gigi that her marital life had been miserable because she married an irresponsible and philandering husband. Gigi remarked: “A husband like that deserves to be killed.” Marivic killed her husband. Is Gigi a principal by inducement?

A: NO. A thoughtless expression is not an inducement to kill. The inducement must precede the act induced and must be so influential in producing the criminal act that without it the act would not have been perfected.

When the criminal liability of the principal by inducement arise

The criminal liability of the principal by inducement arises only when the crime is committed by the principal by direct participation.

Principal by inducement vis-à-vis Proposal to commit a felony

PRINCIPAL BY INDUCEMENT	PROPOSAL TO COMMIT A FELONY
In both, there is an inducement to commit a crime.	
Liabe only when the crime is committed	GR: Proposal to commit a felony is not punishable.

by the principal by direct participation.	<p>XPN: Proposal to commit treason, coup d'état, rebellion</p> <p>However, the person to whom the proposal is made should not commit the crime; otherwise, the proponent becomes a principal by inducement.</p>
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Effect of the acquittal of the principal by direct participation on the liability of the principal by inducement

1. Conspiracy is negated by the acquittal of co-defendant.
2. One cannot be held guilty of having instigated the commission of a crime without first being shown that the crime has been actually committed by another.

NOTE: If the one charged as principal by direct participation is acquitted because he acted without criminal intent or malice, his acquittal is not a ground for the acquittal of the principal by inducement.

PRINCIPALS BY INDISPENSIBLE COOPERATION

Principal by indispensable cooperation are those who:

1. Participated directly in the criminal resolution; or
2. Cooperated in the commission of the crime by performing an act, without which it would not have been accomplished.

Cooperation in the commission of the offense

Cooperation in the commission of the offense means to desire or wish a common thing. But that common will or purpose does not necessarily mean previous understanding, for it can be explained or inferred from the circumstances of each case.

NOTE: A principal by indispensable cooperation may be a co-conspirator under the doctrine of implied conspiracy. He becomes a co-conspirator by indispensable cooperation, although the common design or purpose was not previously agreed upon.

Illustration: X wanted to kill Y who resides in an island. The only means to reach the island is to ride on the motorboat owned by A. X told A to bring him to the island because he is going to kill Y. A brought X to the island where X killed Y. A is a principal by indispensable cooperation. His motorboat is the only means to reach the island where Y resides. Without his cooperation X would not have killed Y.

NOTE: If contributory acts were made after the crime was committed, the accused cannot be considered to be a principal by indispensable cooperation.

An accused may be both a principal by direct participation and a principal by indispensable cooperation (Amurao, 2013).

Illustration: When Sergio had sexual intercourse with the complainant against her will by employing force and intimidation, the crime committed is rape through direct participation. When he aided Berto and made it possible for the latter to have carnal knowledge of complainant also against her will and through force and intimidation, the accused committed another crime of rape through indispensable cooperation. Thus, Sergio is guilty of two crimes of consummated rape.

May there be cooperation by acts of negligence?

Yes. One who, by acts of negligence, cooperates in the commission of estafa through falsification or malversation through falsification, without which negligent acts the commission of the crime could not have been accomplished, is a co-principal. But one who cooperated in the commission of the crime was held guilty of the same crime through reckless imprudence. (Samson vs. CA, 103 Phil. 277; People vs. Rodis, 105 Phil. 1294)

**ACCOMPLICES
ART. 18, RPC**

Accomplice (BAR 2007, 2009)

An accomplice is one who, not being included in Art. 17 as principal, cooperate in the execution of the offense by previous or simultaneous acts.



Elements

1. The community of criminal design, that is, knowing the criminal design of the principal by direct participation, he concurs with the latter in his purpose; and
2. The performance of previous or simultaneous acts which are not indispensable to the commission of the crime (*People v. Tamayo, G.R. No. 138608, September 24, 2002*).
3. That there be relation between the acts done by the principal and those attributed to the person charged as accomplice.

An accomplice is also known as an accessory before the fact.

NOTE: In case of doubt, the participation of the offender will be considered that of an accomplice rather than that of a principal.

Q: A, wanting to kidnap B while playing at a park, forced B to come with him at a nearby wharf. There, he saw C and D ready to leave, with their boats. C, without putting any resistance and fully acquiescing to the acts of A allowed him, to transport the kidnapped victim, thereby facilitating the commission of the crime. Is C liable as an accomplice or a principal by indispensable cooperation?

A: C is liable as an accomplice. His act was not indispensable to the commission of the crime because A may also use the boat of D in order to accomplish his criminal design. His simultaneous act was necessary in the execution of the crime. If C was the only one who is present in the wharf, and A could not have accomplished the crime except with the participation of C, then C would be a principal by indispensable cooperation.

NOTE: In determining whether the offender is a principal or accomplice, the basis is the importance of the cooperation to the consummation of the crime.

Accomplice vis-à-vis Conspirator (BAR 2007)

1. An accomplice incurs criminal liability by merely cooperating in the execution of the crime without participating as a principal, by prior or simultaneous acts, whereas a conspirator participates in the commission of a crime as a co-principal.
2. An accomplice incurs criminal liability in an individual capacity by his act alone of

cooperating in the execution of the crime while a conspirator incurs criminal liability not only for his individual acts in the execution of the crime but also from the acts of the other participants in the commission of the crime collectively. The acts of the other participants in the execution of the crime are considered also as acts of a conspirator for purposes of collective criminal responsibility.

3. An accomplice participates in the execution of a crime when the criminal design or plan is already in place; whereas a conspirator participates in the adoption or making of the criminal design.
4. An accomplice is subjected to a penalty one degree lower than that of a principal, whereas a conspirator incurs the penalty of a principal.

Other examples of cooperation by an Accomplice

1. *By previous act* - lending a knife or a gun to the murderer, knowing the latter's criminal purpose.
2. *By simultaneous act* - the defendant who held one of the hands of the victim and tried to take away the latter's revolver, while his co-defendant was attacking him, is an accomplice for he cooperated in the execution of the crime by simultaneous act without any previous agreement or understanding (*Estrada, 2008*).

**ACCESSORIES
ART. 19, RPC**

Accessories (BAR 1992, 1998, 2004, 2008)

Accessories are those who do not participate in the criminal design, nor cooperate in the commission of the felony, but with knowledge of the commission of the crime, he subsequently takes part in three ways by:

1. Profiting or assisting the offender to profit by the effects of the crime;
2. Concealing or destroying the body of the crime to prevent its discovery; and

NOTE: Where the accused misleads the authorities by giving them false information, such act is equivalent to concealment and he should be held as an accessory.

3. Harboring, concealing or assisting in the escape of the principal of the crime. **(BAR 2008)**

The accessory comes into the picture when the crime is **already consummated**, not before the consummation of the crime.

NOTE: One cannot be an accessory unless he knew of the commission of the crime; however, he must not have participated in its commission.

If the offender has already involved himself as a principal or an accomplice, he cannot be held as an accessory any further even if he performed acts pertaining to an accessory.

Instances when accessories are not criminally liable

1. When the felony committed is a light felony.
2. When the accessory is related to the principal as spouse, or as an ascendant, or descendant or as brother or sister whether legitimate, natural or adopted or where the accessory is a relative by affinity within the same degree, unless the accessory himself profited from the effects or proceeds of the crime or assisted the offender to profit therefrom (*RPC, Art. 20*).

PROFITING OR ASSISTING OFFENDER TO PROFIT BY THE EFFECTS OF THE CRIME

Illustration: If a person not having participated as principal or accomplice in robbery or theft but knowing that the property being offered to him is the proceeds or subject matter of the said crime, bought or purchased or dealt in any manner with which such property, obtaining benefit from said transaction or helping the thief or robber to profit therefrom.

NOTE: The accessory must receive the property from the principal. He should not take it without the consent of the principal. If he took it without the consent of the principal, he is not an accessory but a principal in the crime of theft.

PD 1612 vis-à-vis Art. 19(1) of the RPC

FENCING	ACCESSORY
Fencing is limited to theft and robbery. The terms theft and robbery are used as a generic	Not limited in scope.

term to refer to any kind of unlawful taking, not just theft or robbery.	
Mere possession of stolen items creates a presumption of fencing.	There is no presumption of being an accessory.
Fencing is a principal crime in itself. As such, it can stand on its own. There is no need to prove that one is guilty of theft or robbery.	It is necessary to prove that the principal committed the crime. Hence, before an accessory could be held liable, the principal must have been convicted first of the crime charged.
The penalty is higher than the penalty of an accessory.	Penalty is less than that imposed in fencing.
<i>Malum prohibitum</i> and therefore there is no need to prove criminal intent.	<i>Malum in se</i> and therefore there is a need to prove criminal intent.
The fence need not be a natural person but may be a firm, association, corporation or partnership or other organization.	Natural person only.

One who is charged as an accessory under Art. 19(1) may be likewise charged under PD 1612 for the same act

What is prohibited under the Constitution is the prosecution of the accused twice for the same offense.

NOTE: The State may choose to prosecute the offender either under the RPC or PD 1612 although preference for the latter would seem inevitable considering that fencing is a crime *malum prohibitum*, and PD 1612 creates a presumption of fencing and prescribes a higher penalty based on the value of the property (*Dizon-Pamintuan v. People, ibid.*).



***Corpus delicti* (BAR 2000)**

Corpus delicti literally means the body or substance of the crime or the fact that a crime has been committed, but does not include the identity of the person who committed it.

The *corpus delicti* is the body of the crime, not necessarily the corpse. Thus, even if the corpse is not recovered, as long as the killing is established beyond reasonable doubt, criminal liability will arise and if there is someone who destroys the *corpus delicti* in order to prevent discovery, such act would make him an accessory (*Inovero v. Coronel*, 65 O.G. 3160).

Elements of corpus delicti

- a. The existence of a certain act or result forming the basis of the criminal charge; and
- b. The existence of a criminal agency as the cause of the act or result.

The mere act of a person of carrying the cadaver of one unlawfully killed, when it was buried to prevent the discovery thereof is sufficient to make him responsible as an accessory under par. 2 of Art. 19 (*People v. Galleto*, G.R. No L-1095, July 31, 1947).

Misleading the investigating police officer to prevent the discovery of the crime or to help the offender escape is also an act of destroying the *corpus delicti*.

HARBORING OR CONCEALING AN OFFENDER

Persons that may be held guilty as an accessory by harboring, concealing or assisting in the escape of the principal of the crime

1. Public officers

Requisites:

- a. Accessory is a public officer;
- b. He harbors, conceals, or assists in the escape of the principal;
- c. He acts with abuse of his public functions; and
- d. The crime committed by the principal is any crime, provided it is not a light felony.

In the case of a public officer, the crime committed by the principal is immaterial. Such officer becomes an accessory by the mere fact that he helped the principal escape by harboring, concealing, making use of his public function and thus, abusing the same, but the offender whom he harbors, conceals or assist in the escape must be a principal.

Illustration: Abusing his public office, the president of the town of Cabiao refused to prosecute the crime of homicide and thus made it possible for the principal to escape. He refused to make an investigation of the serious occurrence, of which complaint was made to him. The municipal president was found guilty as an accessory (*U.S. v. Yacat*, G.R. No. 110, October 24, 1902).

If the public officer assisted in the escape of an accomplice or an accessory he is not liable under Art. 19 par. 3 of the RPC. He is liable however under PD 1829 for obstruction of justice.

2. Private person

Requisites:

- a. Accessory is a private person;
- b. He harbors, conceals or assists in the escape of the author of the crime (he could be a principal, accomplice, or an accessory); and
- c. The crime committed by the principal is either:
 - i. Treason
 - ii. Parricide
 - iii. Murder
 - iv. Attempt against the life of the President
 - v. That the principal is known to be habitually guilty of some other crime.

Correlation of guilt of the principal and accessory

GR: The accessory cannot be held criminally liable without the principal being found guilty of any such crime.

XPN: When the principal was not held liable because of an exempting circumstance under Art. 12.

**ACCESSORIES WHO ARE EXEMPT
FROM CRIMINAL LIABILITY
ART. 20, RPC**

Accessories who are exempt from criminal liability (BAR 1998, 2004, 2010)

GR: An accessory is exempt from criminal liability, when the principal is his:

1. Spouse
2. Ascendant
3. Descendant
4. Legitimate, natural, or adopted brother, sister or relative by affinity within the same degree.

XPN: Accessory is not exempt from criminal liability even if the principal is related to him, if such accessory:

1. Profited by the effects of the crime; or
2. Assisted the offender to profit from the effects of the crime.

The exemption provided in this article is based on the ties of blood and the preservation of the cleanliness of one's name, which compels one to conceal crimes committed by relatives so near as those mentioned in this article. Nephew and niece are not included.

Public officer contemplated under par. 3 of Art. 19 are exempt by reason of relationship to the principal, even such public officer acted with abuse of his public functions.

Certain accomplices to be punished as principals in certain crimes against chastity

Under Article 346 of RPC, an ascendant, guardian, curator, teacher and any person who, by abuse of authority or confidential relationship, shall cooperate as an accomplice in the perpetration of the crimes embraced in Chapter 2, 3 and 4 of Book 2, Title 11 (Crimes against Chastity) shall be punished as principals (*Amurao, 2008*).

Q: DCB, the daughter of MSB, stole the earrings of a stranger. MCB pawned the earrings with TBI Pawnshop as a pledge for Php500 loan. During the trial, MCB raised the defense that being the mother of DCB, she cannot be held liable as an accessory. Will MCB's defense prosper? (BAR 2004)

A: NO, MCB's defense will not prosper because the exemption from criminal liability of an accessory by virtue of relationship with the principal does not cover accessories who themselves profited from or assisted the offender to profit by the effects or proceeds of the crime. This non-exemption of an accessory, though related to the principal of the crime, is expressly provided in Art. 20 (RPC).

Q: Immediately after murdering Bob, Jake went to his mother to seek refuge. His mother told him to hide in the maid's quarter until she finds a better place for him to hide. After two days, Jake transferred to his aunt's house. A week later, Jake was apprehended by the police. Can Jake's mother and aunt be made criminally liable as accessories to the crime of murder? (BAR 2010)

A: The mother is exempt from criminal liability under Art. 20 of the RPC as a result of her relationship to her son; however, the aunt is liable as accessory under Art. 19 paragraph 3 of the RPC if the author of the crime is guilty of murder. The relationship between an aunt and a nephew does not fall within the classification for exemption.

**MULTIPLE OFFENDERS
(DIFFERENCES, RULES, AND EFFECTS)**

1. **Recidivism** – the offender at the time of his trial for one crime shall have been previously convicted by final judgment of another embraced in the same title of the RPC.
2. **Reiteracion** – the offender has been previously punished for an offense which the law attaches an equal or greater penalty or for two or more crimes to which it attaches a lighter penalty.
3. **Habitual delinquency**— the offender within the period of 10 years from the date of his release or last conviction of the crimes of serious or less serious physical injuries, robbery, theft, *estafa* or falsification, is found guilty of any of the said crimes a third time or oftener (*Art. 62, RPC*).

NOTE: It is important that the previous convictions refer to the felonies enumerated in Art. 62 of the RPC. If, for example, the



accused was convicted for illegal sale of dangerous drugs, he cannot be considered a habitual delinquent (*People v. Dalawis, G.R. No. 197925, November 9, 2015*).

4. **Quasi-recidivism** — Any person who shall commit a felony after having been convicted by final judgment before beginning to serve such sentence or while serving such sentence shall be punished by the maximum period prescribed by law for the new felony. (Art. 160)

Recidivism and *Reiteracion* are generic aggravating circumstances which can be offset by mitigating circumstances. Habitual delinquency and Quasi-Recidivism, on the other hand, are special aggravating circumstances which cannot be offset.

Requisites of habitual delinquency as an aggravating circumstance

1. Within a period of 10 years from the date of his release or last conviction;
2. Of the crime of serious or less serious physical injuries, robbery, theft, *estafa* or falsification; and
3. He is found guilty of said crimes a third time or oftener.

Offender can be a recidivist and a habitual delinquent at the same time

When the offender is a recidivist and at the same time a habitual delinquent, the penalty for the crime for which he will be convicted will be increased to the maximum period, unless offset by a mitigating circumstance. After determining the correct penalty for the last crime committed, an added penalty will be imposed in accordance with Art. 62.

Illustration: If the 1st conviction is for serious physical injuries or less serious physical injuries and the 2nd conviction is for robbery, theft or *estafa* and the 3rd is for falsification, then the moment the habitual delinquent is on his fourth conviction, he is a habitual delinquent and at the same time a recidivist because at least, the fourth time will have to fall under any of the three categories.

Habitual delinquency without being a recidivist (BAR 2001, 2009)

Convict can be a habitual delinquent without being a recidivist when two of the crimes committed are NOT embraced in the same title of the Code.

Additional penalties for habitual delinquency

1. Upon 3rd conviction – *Prision correctional* in its medium and maximum periods
2. Upon 4th conviction – *Prision mayor* in its minimum and medium periods
3. Upon 5th or additional conviction – *Prision mayor* in its maximum period to *Reclusion temporal* in its minimum period

NOTE: The total penalties must not exceed 30 years. (Art. 62)

Total penalties

Total penalties refer to the penalties:

1. For the last crime of which he is found guilty; and
2. Additional penalty.

NOTE: The imposition of additional penalty for habitual delinquency is constitutional because it is neither an *ex post facto* law nor an additional punishment for former crimes. It is simply a punishment on future crimes, the penalty being enhanced on account of the criminal propensities of the accused (*People v. Montero, G.R. No. 34431, August 11, 1931*).

Elements of quasi-recidivism

1. Offender was already convicted by final judgment of one offense; and
2. He committed a new felony before beginning to serve such sentence or while serving the same

The offender must be serving sentence by virtue of final judgment to trigger the application of Art. 160 (RPC) on quasi-recidivism.

Applicability of quasi-recidivism

Art. 160 (RPC) applies although the next offense is different in character from the former offense for which the defendant is serving sentence. It makes no difference whether the crime for which an accused is serving sentence at the time of the commission of the offense charged, falls under the RPC or under a special law.

Q: The CFI of Rizal found the defendants guilty of the crime of murder and imposed upon them the penalty of death by reason of the existence of special aggravating circumstance of quasi-recidivism. On automatic review by the Supreme Court, the counsel of the defendants contends that the allegation of quasi-recidivism in the Information is ambiguous, as it fails to state whether the offenses for which the defendants were serving sentence at the time of the commission of the crime charged were penalized by the Revised Penal Code, or by a special law. Is the argument of the counsel correct?

A: NO. For purposes of quasi-recidivism under Article 160 of the Revised Penal Code, it will be appreciated whether the crime for which an accused is serving sentence at the time of the commission of the offense charged, falls under said Code or under a special law (*People v. Peralta, et. al., G.R. No. L-15959, October 11, 1961*).

Q: Defendant-appellant, while serving sentence for the crime of homicide, killed one Sabas Aseo, for which the CFI of Manila found him guilty with the crime of murder, meting him the penalty of death. On appeal to the Supreme Court, appellant contend that the CFI erred in applying Article 160 of the RPC as it is applicable only when the new crime which is committed by a person already serving sentence is different from the crime for which he is serving sentence. Is the defendant correct?

A: NO, as the new offense need not be different or be of different character from that of the former offense. The deduction of the appellant from the head note of Article 160 of the word "another" is not called for. The language is plain and ambiguous. There is not the slightest intimation in the text of article 160 that said article applies only in cases where the new offense is different in character from the former offense for which the defendant is serving the penalty. Hence, even if he is serving sentence for homicide and was later found to be guilty of murder, Article 160 applies (*People v. Yabut, G.R. No. 39085, September 27, 1933*).

Q: While serving sentence for robbery in the New Bilibid Prisons, defendants attacked and

stabbed three inmates who were confined in the prison hospital, resulting in the death of one and the infliction of numerous stab wounds on the others. After said incident, the defendants voluntarily surrendered to the authorities and plead guilty to said crimes. The lower court found the defendants guilty of the crime of murder and imposed the penalty of death. On automatic review by the Supreme Court, defendants contend that they should have been given the benefit of the mitigating circumstances of voluntary surrender and plea of guilty. Is their argument correct?

A: NO, as quasi-recidivism cannot be offset by ordinary mitigating circumstances. Quasi-recidivism is a special aggravating circumstance which imposes the maximum of the penalty for the new offense. Article 160 specifically provides that the offender "shall be punished by the maximum period of the penalty prescribed by law for the new felony." Notwithstanding, therefore, the existence of mitigating circumstances of voluntary surrender and plea of guilty, the imposition of the supreme penalty is in order (*People v. Alicia and Bangayan, G.R. No. L-38176, January 22, 1980*).

Pardon of a quasi-recidivist

GR:

1. When he has reached the age of 70 and has already served out his original sentence, or
2. When he shall complete it after reaching said age

XPN: Unless by reason of his conduct or other circumstances, he shall not be worthy of such clemency.

NOTE: This is only directory as the President cannot be compelled to grant pardon.

Quasi-recidivism and reiteration cannot co-exist

Quasi-recidivism refers to a situation where the second crime is committed DURING the service of sentence for the first crime. *Reiteracion* refers to a situation where the second crime is committed AFTER service of sentence for the first crime. As to reiteracion, the law says "previously punished."

Q: Defendants-appellants, inmates of Davao Penal Colony and while serving sentence



therein, were found guilty of the crime of murder for killing one Regino Gasang. Trial court sentenced them to suffer the penalty of death, appreciating against all the defendants the special aggravating circumstance of quasi-recidivism and to two of them the aggravating circumstance of *reiteracion*. Is the trial court correct?

A: NO. It was error for the trial judge to consider against the accused the aggravating circumstance of having been previously punished for two or more crimes to which the law attaches lighter penalties because the said aggravating

circumstance of "*reiteracion*" requires that the offender against whom it is considered shall have served out his sentences for the prior offenses. Here all the accused were yet serving their respective sentences at the time of the commission of the murder. However, the special circumstance of quasi-recidivism was correctly considered against all the accused who were at the time of the commission of the offense were undoubtedly serving their respective sentences (*People v. Layson, et. al., G.R. No. L-25177, October 31, 1969*).

Reiteracion, recidivism, habitual delinquency, and quasi-recidivism distinguished

REITERACION	RECIDIVISM	HABITUAL DELIQUENCY	QUASI-RECIDIVISM
It is necessary that the offender shall have served out his sentence for the first offense.	It is enough that a final judgment has been rendered in the first offense.	Within a period of 10 years from the date of release or last conviction of the crimes covered, he is found guilty of any of said crimes a third time or oftener.	Felony was committed after having been convicted by final judgment of an offense, before beginning to serve sentence or while serving the same.
The previous and subsequent offenses must not be embraced by the same Title of the RPC.	Requires that the offenses be included in the same Title of the Code.	Crimes covered are serious or less serious physical injuries, robbery, theft, <i>estafa</i> and falsification.	First and subsequent conviction may or may not be embraced by the same title of the RPC.
Not always aggravating; discretion of the court to appreciate.	It increases the penalty to its maximum period.	Shall suffer additional penalty.	Shall be punished by the maximum period of the penalty prescribed by law for the new felony.
Includes offenses under special law.	Felonies under RPC only.	Limited to serious or less serious physical injuries, robbery, theft, <i>estafa</i> and falsification.	First crime for which the offender is serving sentence need not be a crime under the RPC but the second crime must be one under the RPC.
A generic aggravating circumstance.	A generic aggravating circumstance.	Extraordinary aggravating circumstance which cannot be offset by a mitigating circumstance.	Special aggravating circumstance which may be offset by special privileged mitigating circumstances not by ordinary mitigating circumstances.

NOTE: If recidivism and *reiteracion* are both present, appreciate only recidivism because it is easier to prove.

**OBSTRUCTION OF JUSTICE
(PD 1829)****Purpose**

The purpose of the law is to discourage public indifference or apathy towards the apprehension and prosecution of criminal offenders. It is necessary to penalize acts which obstructs or frustrates or tend to obstruct or frustrate the successful apprehension and prosecution of criminal offenders.

PUNISHABLE ACTS

Any person, who knowingly or willfully obstructs, impedes, frustrates or delays the apprehension of suspects and the investigation and prosecution of criminal cases by committing any of the following acts:

1. Preventing witnesses from testifying in any criminal proceeding or from reporting the commission of any offense or the identity of any offender/s by means of bribery, misrepresentation, deceit, intimidation, force or threats;
2. Altering, destroying, suppressing or concealing any paper, record, document, or object, with intent to impair its verity, authenticity, legibility, availability, or admissibility as evidence in any investigation of or official proceedings in, criminal cases, or to be used in the investigation of, or official proceedings in, criminal cases; **(BAR 2005)**
3. Harboring or concealing, or facilitating the escape of, any person he knows, or has reasonable ground to believe or suspect, has committed any offense under existing penal laws in order to prevent his arrest, prosecution and conviction;
4. Publicly using a fictitious name for the purpose of concealing a crime, evading prosecution or the execution of a judgment, or concealing his true name and other personal circumstances for the same purpose or purposes;
5. Delaying the prosecution of criminal cases by obstructing the service of process or court orders or disturbing proceedings in the fiscal's offices, in Tanodbayan, or in the courts;
6. Making, presenting or using any record, document, paper or object with knowledge of its falsity and with intent to affect the course or outcome of the investigation of, or official proceedings in, criminal cases;
7. Soliciting, accepting, or agreeing to accept any benefit in consideration of abstaining from, discounting, or impeding the prosecution of a criminal offender;
8. Threatening directly or indirectly another with the infliction of any wrong upon his person, honor or property or that of any immediate member or members of his family in order to prevent such person from appearing in the investigation of, or official proceedings in, criminal cases, or imposing a condition, whether lawful or unlawful, in order to prevent a person from appearing in the investigation of or in official proceedings in, criminal cases; and
9. Giving of false or fabricated information to mislead or prevent the law enforcement agencies from apprehending the offender or from protecting the life or property of the victim; or fabricating information from the data gathered in confidence by investigating authorities for purposes of background information and not for publication and publishing or disseminating the same to mislead the investigator or the court (*PD 1829, Sec. 1*).

NOTE: If any of the foregoing acts are committed by a public official or employee, he shall, in addition to the penalties provided there under, suffer perpetual disqualification from holding public office.

Q: Senator Juan Ponce Enrile was charged under PD 1829, for allegedly accommodating Col. Gregorio Honasan by giving him food and comfort in 1989. The complaint states that "knowing that Col. Honasan is a fugitive from justice, Sen. Enrile did not do anything to have Honasan arrested and apprehended." While the complaint was filed, a charge of rebellion against Sen. Enrile was already instituted. Is Sen. Juan Ponce Enrile liable under PD 1829?

A: NO. Sen. Enrile could not be separately charged under PD 1829, as this is absorbed in the charge of rebellion already filed against Sen. Enrile (*Enrile v. Hon. Admin., G.R. No. 93335, September 13, 1990*).

**COMPARE WITH ART. 20, RPC
ACCESSORIES EXEMPT FROM CRIMINAL
LIABILITY**

While Art. 20 exempts certain persons from criminal liability, for being an accessory, PD 1829 penalizes the act of any person, without any distinction, who knowingly or wilfully obstructs,



impedes, frustrates or delays the apprehension of suspects and the investigation and prosecution of criminal cases, which is an act of an accessory. Thus, those exempted as accessory to the crime committed under the Revised Penal Code can still be prosecuted as principals for Obstruction of Justice under PD 1829. The benefits of the exception provided in Art. 20 of the RPC do not apply to PD 1829 since under Art. 10 of the Revised Penal Code, offenses which are punishable under special laws are not subject to the provisions of the Code and shall only be supplementary to such laws. PD 1829, being a special law, is thus controlling, with regard to offenses specially punished.

Accessory charged simultaneously under Art. 19(3) and for violating PD 1829

A person who harbors, conceals or assist in the escape of an author of the crime can be charged simultaneously as accessory under Art. 19(3) and for violating PD 1829; what the Constitution prohibits is putting an accused twice in jeopardy for the same offense.

PENALTIES

GENERAL PRINCIPLES

Penalties

Penalties are the punishment inflicted by the State for the transgression of a law.

Juridical conditions of penalty

1. *Productive of suffering*, without affecting the integrity of the human personality.
2. *Commensurate with the offense*.
3. *Personal* – no one should be punished for the crime of another.
4. *Legal* – it must be a consequence of a judgment according to law.
5. *Certain* – no one may escape its effects.
6. *Equal* to all.
7. *Correctional*.

Purpose of the state in punishing crimes:

The State has an existence of its own to maintain, a conscience to assert, and moral principles to be vindicated. Penal justice must therefore be exercised by the State in the service and satisfaction of a duty, and rests primarily on the moral rightfulness of the punishment inflicted.

NOTE: The basis of the right to punish violations of penal law is the police power of the State.

PENALTIES THAT MAY BE IMPOSED ART. 21, RPC

Only that penalty prescribed by law prior to the commission of the felony may be imposed. No person shall be subject to criminal prosecution for any act of his until after the State has defined the crime and has fixed a penalty therefore (*U.S. v. Parrone, G.R. No. 7038, January 7, 1913*). It is a guaranty to the citizen of this country that no act of his will be considered criminal until the government has made it so by law and has provided a penalty.

Situations when a defendant may benefit from a favorable retroactive effect of a new law

1. The crime has been committed and prosecution begins;
2. Sentence has been passed but service has not begun; and
3. The sentence is being carried out.

Applicability of the principle of retroactivity to special laws

It is applicable even to special laws which provide more favorable conditions to the accused (*U.S. v. Soliman, G.R. No. 11555, January 6, 1917*).

Illustration: RA 9346 expressly recognized that its enactment would have retroactive beneficial effects; referring as it did to "persons whose sentences were reduced to *reclusion perpetua* by reason of this Act". The benefit of Article 22 has to apply, except as to those persons defined as "habitual criminals." (*People v. Bon, G.R. 166401, October 30, 2006*).

Non-applicability of principle of retroactivity

1. A new law increases the civil liability;
2. A new law is expressly made inapplicable.

ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES (RA 9346)

Effect of RA 9346

The penalty meted out was thus reduced to *reclusion perpetua*. Furthermore, Sec. 3(RA 9346) provides that "persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion*

perpetua, by reason of this Act, shall not be eligible for parole under Act No. 4103, known as the Indeterminate Sentence Law, as amended."

Death penalty is not abolished

Death penalty is not abolished. It is only prohibited to be imposed (*People v. Muñoz*, 170 SCRA 107, February 9, 1989).

For the purposes of determining the proper penalty due to the presence of mitigating and aggravating circumstances, or due to the nature of the participation of the offender, it remains in the statute, and it shall be reckoned with.

What is prohibited in RA 9346 is only the imposition of the death penalty.

NOTE: However, the corresponding civil liability should be the civil liability corresponding to death (*People v. Salome*, G.R. No. 169077, August 31, 2006).

Reason: The rights of the the offended persons or innocent third parties are not within the gift of arbitrary disposal of the state

Penalty imposed in lieu of the death penalty

In lieu of the death penalty, the following shall be imposed:

1. *Reclusion perpetua* - when the law violated makes use of the nomenclature of the penalties of the RPC; or
2. *Life imprisonment* - when the law violated does not make use of the nomenclature of the penalties of the RPC (*Sec. 2*).

Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this act, shall not be eligible for parole under Act No. 4103 otherwise known as the Indeterminate Sentence Law (*as amended R.A. 9346, Sec 3*).

Purpose of the law

For justice, because the State has an existence of its own to maintain, a conscience to assert and moral principles to be vindicated. Penal justice rests primarily on the moral rightfulness of the punishment imposed (*Gregorio*, 2008).

Effect of an absolute repeal of penal laws

GR: The effect of depriving a court of its authority to punish a person charged (*Boado*, 2008).

XPN:

1. Inclusion of a saving clause in the repealing statute that provides that the repeal shall have no effect on pending actions.
2. Where the repealing act re-enacts the former statute and punishes the act previously penalized under the old law. In such instance, the act committed before the re-enactment continues to be an offense, regardless of whether the new penalty to be imposed is more favorable to the accused (*Benedicto v. CA*, G.R. 125359, September 4, 2001).

Example: RA 10158, otherwise known as "An Act Decriminalizing Vagrancy".

Note: There can be an implied repeal of a penal statute when it is favorable to the accused. Otherwise, it will have no application pursuant to the rule of interpretation against implied repeal of penal statutes.

Repeals by implication are not favored as laws are presumed to be passed with deliberation and full knowledge of all laws existing on the subject, the congruent application of which the courts must generally presume. (*Philippine International Trading Corp. v COA*, G.R. No. 183517, June 22, 2010)

RETROACTIVE EFFECT OF PENAL LAWS ART. 22, RPC

GR: Penal laws are applied prospectively.

XPN: When retrospective application will be favorable to the person guilty of a felony, provided that:

- a. The offender is NOT a habitual delinquent under Art. 62(5); and
- b. The new or amendatory law does NOT provide against its retrospective application.

Reason for the exception: The sovereign, in enacting a subsequent penal law more favorable to the accused, has recognized that the greater severity of the former law is unjust.

Habitual delinquent

He is a person who, within a period of ten years from the date of his release or last conviction of the crimes of falsification, robbery, *estafa*, theft, or serious or less serious physical injuries, is found guilty of any said crimes a third time or oftener.



Ex-post facto law

It is an act which when committed was not a crime, cannot be made so by statute without violating the constitutional prohibition as to ex post facto laws.

**EFFECT OF PARDON BY THE OFFENDED PARTY
ART. 23, RPC**

GR: Pardon by the offended party does NOT extinguish the criminal liability of the offender.

Reason: A crime committed is an offense against the State. Only the Chief Executive can pardon the offenders. In criminal cases, the intervention of the aggrieved parties is limited to being witnesses for the prosecution (*Reyes, 2017*).

Compromise upon the civil liability arising from an offense may be had; but such compromise shall not extinguish the public action for the imposition of the legal penalty (*Art. 2034, Civil Code*).

A contract stipulating for the renunciation of the right to prosecute an offense or waiving the criminal liability is VOID (*Arts. 1306, 1352, 1409, Civil Code*).

XPN: Pardon by the offended party will bar criminal prosecution in the following crimes:

1. Adultery and Concubinage (*Art. 344*)
EXPRESS or IMPLIED pardon must be given by offended party to BOTH offenders. Pardon must be given PRIOR to institution of criminal action.
2. Seduction, Abduction, Acts of Lasciviousness (*Art. 344*)

Pardon must be given PRIOR to the institution of the criminal action. However, marriage between the offender and the offended party EVEN AFTER the institution of the criminal action or conviction of the offender will extinguish the criminal action or remit the penalty already imposed against the offender, his co-principals, accomplices, and accessories after the fact. (*People v. Dela Cerna, G.R. No. 136899-904, October 9, 2002*)

Pardon by the offended party under Art. 344 is only a bar to criminal prosecution; it is not a ground for extinguishment of criminal liability. Civil liability may be extinguished by the express waiver of the offended party.

3. Rape (as amended by RA 8353)
The subsequent valid marriage between the offender and the offended party shall extinguish criminal liability or the penalty imposed. In case the legal husband is the offender, subsequent forgiveness by the wife as offended party shall also produce the same effect. This however is not applicable in rape where there are two or more principals involved.

**MEASURES OF PREVENTION OR SAFETY
WHICH ARE NOT CONSIDERED AS PENALTIES
ART. 24, RPC**

Measures of prevention that are not considered as penalty

1. The arrest and temporary detention of accused persons, as well as their detention by reason of insanity or imbecility, or illness requiring their confinement in a hospital;
2. The commitment of a minor to any of the institutions mentioned in Art. 80 (*now PD 603 Amended by Sec. 36, par 2 & 3 of RA 9344, as amended by RA 10603*) and for the purposes specified therein;
3. Suspension from the employment or public office during the trial or in order to institute proceedings;
4. Fines and other corrective measures which, in the exercise of their administrative or disciplinary powers, superior officials may impose upon their subordinates; and
5. Deprivation of rights and the reparations which the civil law may establish in penal form.

NOTE: The aforementioned measures are not penalties because they are not imposed as a result of judicial proceedings. They are PREVENTIVE MEASURES only

Purposes for the imposition of penalty under the RPC

1. *Retribution or expiation* – penalty is commensurate with the gravity of the offense.
2. *Correction or reformation* – as shown by the rules which regulate the execution of the penalties consisting in deprivation of liberty.
3. *Social defense* – shown by its inflexible severity to recidivists and habitual delinquents.

**CLASSIFICATION OF PENALTIES
ART. 25, RPC**

General classifications of penalties

1. *Principal penalties* – those *expressly* imposed by the court in the judgment of conviction.
2. *Accessory penalties* – those that are *deemed* included in the imposition of the principal penalties.

Scale in Art. 25 - General classification based on severity, nature, and subject matter.

Scale in Art. 70 – For successive service of sentences imposed on the same accused, in consideration of the severity and nature.

Scale in Art 71 –For graduating penalties by degrees in accordance with the rules of Art 61.

Principal penalties according to their divisibility

DIVISIBLE	INDIVISIBLE
Those that have fixed duration and are divisible into three periods .	Those which have no fixed duration . <i>E.g. Death, reclusion perpetua, perpetual absolute or special disqualification, public censure.</i>

Penalties according to subject-matter

1. Corporal (*death*)
2. Deprivation of freedom (*reclusion, prison, arresto*)
3. Restriction of freedom (*destierro*)
4. Deprivation of rights (*disqualification and suspension*)
5. Pecuniary (*fine*)

Penalties according to their gravity

1. Capital – death
2. Afflictive – *reclusion perpetua* to *prision mayor*
3. Correctional– *prisoncorreccional* to *destierro*
4. Light – *arresto menor*

NOTE: This classification corresponds to the classification of the felonies in Art. 9, grave, less grave and light.

Penalties that can either be principal or accessory

1. Perpetual or temporary *absolutedisqualification*
2. Perpetual or temporary *special disqualification*
3. Suspension
Illustration: Art. 236 punishing the crime of anticipation of duties of a public office, provides for *suspension* as a principal penalty.

Articles 226, 227 and 228, punishing infidelity of public officers in the custody of documents, provide for *temporary special disqualification* as a principal penalty.

NOTE:It is necessary to employ legal terminology in the imposition of penalties because of the substantial difference in their corresponding legal effects and accessory penalties (*Boado, 2008*).

Thus, a sentence of “five years in Bilibid” is defective because it does not specify the exact penalty on RPC (*US vs. Avillar, G.R. No. 9609-11*)

**FINE
ART. 26, RPC
As amended by R.A. 10951**

Imposition of fines

When a fine is considered *afflictive, correctional, or light penalty*

FINE (sec 2 R.A. 10951)	
Afflictive	over ₱1,200,000
Correctional	₱40,000 - ₱1,200,000
Light	Not exceeding ₱40,000

Same basis may be applied by analogy to Bond to keep the peace.

Light felony under Art. 9 vis-à-vis Classification of fine under Art. 26

ART. 9 (3)	ART. 26
A felony punishable by <i>arresto menor</i> or a fine not exceeding P40,000 is a <i>light felony</i> .	If the amount of fine imposed is less than P40,000 , it is a <i>light penalty</i> .

NOTE: If the fine prescribed by the law for a felony is exactly P40,000, it is a *light felony* because Art. 9 (3), which defines light felony should prevail.

Considerations by the court in imposing the amount of fine



- a. The mitigating and aggravating circumstances; and

NOTE: Modifying circumstances are only of secondary importance. There is subsidiary imprisonment if the penalty of fine is not paid (*Regalado, 2007*).

- b. More particularly, the wealth or means of the culprit.

NOTE: This is the main consideration in the imposition of fines.

Penalty cannot be imposed in the alternative

The law does not permit any court to impose a sentence in the alternative, its duty being to indicate the penalty imposed definitely and positively (*People v. Mercadejas, C.A., 54 O.G. 5707; People v. Tabije, C.A., 59 O.G. 1922*).

Under the Bench Book in Criminal Procedure issued by the SC, the imposition of the alternative penalty may be considered during the plea bargaining in the pre-trial of criminal cases.

Q: E and M are convicted of a penal law that imposes a penalty of fine or imprisonment or both fine and imprisonment. The judge sentenced them to pay the fine, jointly and severally, with subsidiary imprisonment in case of insolvency. (BAR 2005)

1. Is the penalty proper? Explain.

Imposing the penalty of fine jointly and severally on E and M is not proper. The penalty should be imposed individually on every person accused of the crime. Any of the convicted accused who is insolvent and unable to pay the fine, shall serve the subsidiary imprisonment.

2. May the judge impose an alternative penalty of fine or imprisonment? Explain.

The judge may not validly impose an alternative penalty. Although the law may prescribe an alternative penalty for a crime, it does not mean that the court may impose the alternative penalties at the same time. The sentence must be definite; otherwise, the judgment cannot attain finality.

**DURATION AND EFFECT OF PENALTIES
ART. 27, RPC**

Duration of each of different penalties

PENALTY	DURATION
<i>Reclusion perpetua</i>	20 yrs. and 1 day to 40 yrs.
<i>Reclusion temporal</i>	12 yrs. and 1 day to 20 yrs.
<i>Prision mayor and temporary disqualification</i>	6 yrs. and 1 day to 12 yrs., except when disqualification is accessory penalty, in which case its duration is that of the principal penalty.
<i>Prision correccional, suspension, and destierro</i>	6 mos. and 1 day to 6 yrs., except when suspension is an accessory penalty, in which case its duration is that of the principal penalty.
<i>Arresto mayor</i>	1 mo. and 1 day to 6 mos.
<i>Arresto menor</i>	1 day to 30 days
<i>Bond to keep the peace</i>	The period during which the bond shall be effective is discretionary on the court.

Imposition of death penalty

Death penalty is imposed in the following crimes:

Treason;
Piracy;
Qualified Piracy;
Qualified Bribery;
Parricide;
Murder;
Infanticide;
Kidnapping;
Robbery with Homicide;
Destructive Arson;
Rape with Homicide;
Plunder;
Certain violations of the Dangerous Drugs Act

Penalty of *reclusion perpetuavis-à-vis* Life imprisonment (BAR 1994, 2001, 2009)

RECLUSION PERPETUA	LIFE IMPRISONMENT
Pertains to the penalty imposed for violation of the RPC	Pertains to the penalty imposed for violation of special laws
It has fixed duration	It has no fixed duration
It carries with it accessory penalties	It does not carry with it accessory penalty

NOTE: Although *reclusion perpetua* has been given a fixed duration, it has remained to be an indivisible penalty. Indivisible penalties have no durations (*People v. Uycogue, G.R. No. 149375, November 26, 2002*).

Nature of *Destierro*

Destierro is a principal penalty. It is a punishment whereby a convict is banished to a certain place and is prohibited from entering or coming near that place designated in the sentence, not less than 25 kilometers but not to extend beyond 250 kilometers.

NOTE: If the convict should enter the prohibited places, he commits the crime of evasion of service of sentence under Art. 157.

Cases when *destierro* can be imposed

1. Serious physical injuries or death under exceptional circumstances (*Art. 247*);
2. In the crime of grave threat or light threat, when the offender is required to put up a bond for good behavior but failed or refused to do so (*Art. 284*);
3. As a penalty for the concubine in concubinage (*Art. 334*); and
4. In cases where after reducing the penalty by one or more degrees *destierro* is the proper penalty.

**PERIOD OF PREVENTIVE IMPRISONMENT
DEDUCTED FROM THE TERM OF
IMPRISONMENT ART. 29, RPC as amended by
R.A. 10592**

GR: Offenders or accused who have undergone preventive imprisonment shall be credited in the service of their sentence consisting of deprivation of liberty, with the **full time** during which they have undergone preventive imprisonment if:

The detention prisoner agrees voluntarily in writing after being informed of the effects thereof with the assistance of counsel to abide by the same disciplinary rules imposed upon convicted prisoners.

XPNS:

1. When they are recidivists, or have been convicted previously twice or more times of any crime; and

2. When upon being summoned for the execution of their sentence they have failed to surrender voluntarily.

When will he be credited with four-fifths (4/5) the time during which he has undergone preventive imprisonment?

If the detention prisoner does not agree to abide by the same disciplinary rules imposed upon convicted prisoners, he shall do so in writing with the assistance of a counsel and shall be credited in the service of his sentence with **four-fifths** of the time during which he has undergone preventive imprisonment.

Credit for preventive imprisonment for the penalty of *reclusion perpetua* shall be deducted from thirty (30) years.

Whenever an accused has undergone preventive imprisonment for a period equal to the possible maximum imprisonment of the offense charged to which he may be sentenced and his case is not yet terminated, he shall be released immediately without prejudice to the continuation of the trial thereof or the proceeding on appeal, if the same is under review.

Computation of preventive imprisonment for purposes of immediate release under this paragraph shall be the actual period of detention with good conduct time allowance: Provided, however, That if the accused is absent without justifiable cause at any stage of the trial, the court may *motu proprio* order the rearrest of the accused: Provided, finally, That recidivists, habitual delinquents, escapees and persons charged with heinous crimes are excluded from the coverage of this Act.

In case the maximum penalty to which the accused may be sentenced is *destierro*, he shall be released after thirty (30) days of preventive imprisonment.

NOTE: A child in conflict with the law shall be credited in the services of his/her sentence with the full time spent in the actual commitment and detention. (R.A. 9344, Sec. 41)

**EFFECTS OF THE PENALTIES ACCORDING
TO THEIR RESPECTIVE NATURE
ART. 31-35, RPC**

Effects produced by the penalties of perpetual or temporary absolute disqualification for public office (Art. 30, RPC)

1. Deprivation of public offices and employments, even if by election;
2. Deprivation of right to vote or be elected to such office;
3. Disqualification for the offices or public employments and for the exercise of any of the rights mentioned; and
4. Loss of right to retirement pay or pension for any office formerly held.

NOTE: In temporary absolute disqualification the disqualification shall last during the term of the sentence, except:

1. Deprivation of the public office or employment; and
2. Loss of all rights to retirement pay or other pension for any office formerly held.

NOTE: Plebiscite is NOT mentioned or even contemplated under Art. 30, par. 2, hence, the offender may vote in that exercise, subject to the provisions of pertinent election laws.

Perpetual absolute disqualification vis-à-vis Temporary absolute disqualification

PERPETUAL ABSOLUTE DISQUALIFICATION	TEMPORARY ABSOLUTE DISQUALIFICATION
Effective during the lifetime of the convict and even after the service of the sentence.	Disqualification lasts during the term of the sentence, and is removed after the service of the same, <i>except:</i> (1) Deprivation of the public office/employment; (2) Loss of all rights to retirement pay or other pension for any office formerly held.

Effects produced by the penalties of perpetual or temporary special disqualification for public office, profession or calling (Art. 31, RPC)

1. Deprivation of the office, employment, profession or calling affected; and
2. Disqualification for holding similar offices or employments perpetually or during the term of the sentence.

Effects produced by the penalties of perpetual or temporary special disqualification for the exercise of suffrage (Art. 32, RPC)

1. Deprivation of right to vote or to be elected to any public office; and
2. Cannot hold any public office during the period of disqualification.

Effects produced by the penalties of suspension from public office, profession or calling or the right of suffrage (Art. 33, RPC)

1. Disqualification from holding such office or exercising such profession or calling or right of suffrage during the term of the sentence; and
2. If suspended from public office, the offender cannot hold another office having similar functions during the period of suspension

Disqualification is not a denial of one's right

Disqualification is withholding of privilege only. It is imposed for protection not for punishment. The presumption is that one rendered infamous by conviction of felony, or other base offenses indicative of moral turpitude, is unfit to exercise the privilege of suffrage or to hold office (*People v. Corral, G.R. No. 42300, January 31, 1936*).

Q: Cataquiz argues that his removal has rendered the imposition of the principal penalty of dismissal impossible. Consequently, citing the rule that the accessory follows the principal, he insists that the accessory penalties may no longer be imposed on him. Is he correct?

A: NO. The accessory penalties of disqualification from re-employment in public service and forfeiture of government retirement benefits can still be imposed on him, notwithstanding the impossibility of effecting the principal penalty of dismissal because of his removal from office. Even if the most severe of administrative sanctions – that of separation from service – may no longer be imposed, there are other penalties which may be imposed on her if she is later found guilty of administrative offenses charged against her, namely, the disqualification to hold any government office and the forfeiture of benefits (*O.P. v. Cataquiz, G.R. No. 183445, September 14, 2011 reiterating Pagano v. Nazarro, Jr.*).

Civil Interdiction (Art. 34, RPC)

It is an accessory penalty which produces the following effects:



1. Deprivation of the rights of parental authority or guardianship of any ward;
2. Deprivation of marital authority; and
3. Deprivation of the right to manage his property and of the right to dispose of such property by any act or any conveyance *inter vivos*.

NOTE: Offender may dispose such property by will or donation *mortis causa*.

Duties of a person sentenced to give bond to keep the peace (Art. 35, RPC)

It shall be the duty of the offender to:

1. Present two sufficient sureties who shall undertake that the offender will not commit the offense sought to be prevented, and that in case such offense be committed they will pay the amount determined by the court; or
2. Deposit such amount with the clerk of court to guarantee said undertaking; or
3. The offender may be detained, if he cannot give the bond, for a period not to exceed 6 months if prosecuted for *grave or less grave* felony, or for a period not to exceed 30 days, if for a *light felony*.

Bond to keep the peace vis-à-vis Bail bond

BOND TO KEEP THE PEACE	BAIL BOND
It is imposed as a distinct penalty (Art. 284).	It is posted for the provisional release of an accused person after his arrest or during trial but before final judgment of conviction (Rule 114, Revised Rules of Criminal Procedure).

Bond to keep peace vis-à-vis Bond for good behavior

BOND TO KEEP THE PEACE	BOND FOR GOOD BEHAVIOR
Failure to post a bond to keep the peace results to imprisonment either for 6 months or 30 days, depending on whether the felony committed is grave or less grave on one hand, or it is light only.	The legal effect of failure to post a bond for good behavior is not imprisonment but <i>destierro</i> under Article 284.

It is not applicable to any particular case.	It is applicable only to cases of grave threats and light threats.
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PARDON, ITS EFFECTS

ART. 36, RPC

Effects of pardon by the president:

GR: A pardon shall not restore the right to hold public office or the right of suffrage. **(BAR 2015)**

XPN: When any or both such rights is/are expressly restored by the terms of the pardon; or if it is an absolute pardon

NOTE: Pardon shall not exempt the culprit from the payment of the civil liability.

Limitations upon the exercise of the pardoning power:

1. That the power can be exercised only after conviction "by final judgment";
2. That such power does not extend to cases of impeachment;
3. No pardon, amnesty, parole or suspension of sentence for violation of election laws, rules, and regulations shall be granted by the President without the favorable recommendation of the COMELEC.

GR: When the principal penalty is remitted by pardon, only the effect of that principal penalty is extinguished, but not the accessory penalties attached to it.

XPN: When an absolute pardon is granted after the term of imprisonment has expired, it removes what is left of the consequences of conviction.

CONFISCATION AND FORFEITURE OF THE PROCEEDS OR INSTRUMENTS OF THE CRIME

ART. 45, RPC

Confiscation and forfeiture of proceeds or instruments of the crime

GR: Every penalty imposed shall carry with it the confiscation of the proceeds of the crime and the instruments or tools with which it was committed. Such proceeds, instruments or tools would be confiscated and forfeited in favor of the Government:

XPN: They are properties belonging to a third person who is not liable for the offense;



NOTE: Said properties should not have been placed under the jurisdiction of the court because they must be presented in evidence and identified in judgment.

XPN to the XPN :Articles which are not subject to lawful commerce shall be destroyed.

Q: Can a third person invoke the provision of Article 45 of the Revised Penal Code or Section 20 of RA 9165 (which provides that every penalty imposed therein shall carry with it forfeiture and confiscation in favor of the government unless they are property of a third person not liable for the unlawful act) to recover his property which has been taken by the authorities while the main case is going on?

A: NO. The status of any article confiscated in relation to the unlawful act for the duration of the trial in the RTC as being in *custodia legis* is primarily intended to preserve it as evidence and to ensure its availability as such. To release it before the judgment is rendered is to deprive the trial court and the parties access to it as evidence. Forfeiture, if warranted pursuant to either Article 45 of the *Revised Penal Code* and Section 20 of RA No. 9165, would be a part of the penalty to be prescribed. The determination of whether or not any article confiscated in relation to the unlawful act *would be* subject of forfeiture could be made only when the judgment was to be rendered in the proceedings (*PDEA v. Brodett, G.R. No. 196390, September 28, 2011*).

APPLICATION OF PENALTIES ART. 46-77, RPC

Penalties are applied based on:

1. The stages of commission of the felony
 - a. Consummated
 - b. Frustrated
 - c. Attempted
 2. The offenders and their participation
 - a. Principal
 - b. Accomplice
 - c. Accessory
 3. Aggravating and mitigating circumstances.
- Computation of penalty**

Factors that should be considered in computing the proper imposable penalty?

1. Prescribed or graduated penalty
2. Indivisible or divisible penalty
3. Applicability or non-applicability of the Indeterminate Sentence Law

PRESCRIBED OR GRADUATED PENALTY

What is the prescribed penalty?

The prescribed penalty is that found in Book II of the Revised Penal Code.

What is the graduated penalty?

The graduated penalty is the imposable penalty after taking into consideration certain graduating factors.

What are the graduating factors?

1. Stages of execution
 2. Nature of participation
- NOTE:** For #1 and #2, see table on the application of Articles 50-57 of the RPC.
3. Presence of privileged mitigating circumstance

PRIVILEGED MITIGATING CIRCUMSTANCE	ORDINARY MITIGATING CIRCUMSTANCE
Adjust the penalty by degree	Adjust the penalty by period
Not subject to the offset	Subject to the offset rule

What are the privileged mitigating circumstances under the RPC?

1. When the offender is a minor under 18 years of age (*RPC, Art. 68*); (**BAR 2013, 2014**)
2. When the crime committed is not wholly excusable (*RPC, Art. 69*);
3. When there are two or more mitigating circumstances and no aggravating circumstance, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according the number and nature of such circumstances (*RPC, Art. 64, par. 5*); (**BAR 1997**)
4. Voluntary release of the person illegally detained within 3 days without the offender attaining his purpose and before the institution of the criminal action (*RPC, Art. 268, par. 3*);
5. Abandonment without justification by the offended spouse in case of adultery (*RPC, Art. 333, par. 3*); and
6. Concealing dishonor in case of infanticide (*RPC, Art. 255, par. 2*).

NOTE: If it is the maternal grandparent who committed the offense to conceal dishonor, the penalty imposed is one degree lower. If it is the pregnant woman who committed the offense to conceal dishonor, the penalty imposed is two degrees lower. In case of concealing dishonor by a pregnant woman in abortion, the imposable penalty is merely lowered by period and not by degree, hence, not a privileged mitigating circumstance.

What are the privileged mitigating circumstances contemplated under Art. 69 of the RPC?

1. Incomplete justifying circumstances (*RPC, Art. 11*) and
2. Incomplete exempting circumstances (*RPC, Art. 12*)

Provided that the majority of their conditions are present.

For Art. 69 of the RPC to apply, it is necessary that:

1. Some of the conditions required to justify the deed or to exempt from criminal liability are lacking,
2. The majority of such conditions are nonetheless present.

NOTE: If there are only two requisites, the presence of one is already considered as majority.

3. When the circumstance has an indispensable element, that element must be present in the case (*Regalado, 2007*).

Instances when mitigating and aggravating circumstances are not considered in the imposition of penalty

1. When penalty is single and indivisible;
2. In felonies thru negligence;
3. The penalty to be imposed upon a Moro or other non-Christian inhabitants. It lies in the discretion of the trial court, irrespective of the attending circumstance;
4. When the penalty is only a fine imposed by an ordinance; and
5. When the penalties are prescribed by special laws.

Two classifications of penalties

1. Indivisible
2. Divisible - can be divided into 3 periods
 - a. Minimum
 - b. Medium
 - c. Maximum

Period vis-à-vis Degree

Period is each of the three equal parts of a divisible penalty, while degree is the diverse penalties mentioned by name in the Revised Penal Code.

Rules on Graduation of Penalties

First rule: Where the graduated penalty is a single full penalty

Single penalty – one full penalty

Compound penalty – composed of two penalties.

Complex penalty – consists of three penalties.

Whether the prescribed penalty is single, compound, or complex, the graduated penalty is single and full penalty.

e.g.

a. Homicide – prescribed penalty is single penalty of reclusion temporal:

one degree lower is prision mayor

two degrees lower is prision correccional

b. Murder – prescribed penalty is compound penalty of reclusion perpetua to death:

one degree lower is reclusion temporal

two degrees lower is prision mayor

c. Treason committed by a resident alien – prescribed penalty is complex penalty of reclusion temporal to death:

one degree lower is prision mayor

two degrees lower is prision correccional

Second rule: If the prescribed penalty is in period, then the graduated penalty is also in period

Single period – one full period

Compound penalty – composed of two periods

Complex penalty – consists of three periods

e.g.

a. Technical malversation – the prescribed penalty is single period of prision correccional in its minimum period

one degree lower is arresto mayor in its maximum period

two degrees lower is *arresto mayor* in its medium period

b. Theft – the prescribed penalty is compound period of *prision correccional* in its medium period to *prision correccional* in its maximum period

one degree lower is *arresto mayor* in its maximum period to *prision correccional* in its minimum period

two degrees lower is *arresto mayor* in its minimum period to *arresto mayor* in its medium period

c. Simple robbery – the prescribed penalty is complex period of *prision correccional* in its maximum period to *prision mayor* in its medium period

one degree lower is *arresto mayor* in its maximum period to *prision correccional* in its medium period

two degrees lower is *destierro* in its maximum period to *arresto mayor* in its medium period

Third rule: When the prescribed penalty is composed of a full penalty and penalties with period

e.g.

a. Section 5(b) of RA 7610 – the prescribed penalty is *reclusion temporal* in its medium period to *reclusion perpetua* – the graduated penalty must be a complex period one degree lower is *prision mayor* in its medium period to *reclusion temporal* in its minimum period

DIVISIBLE OR INDIVISIBLE PENALTIES

RULES FOR THE APPLICATION OF INDIVISIBLE PENALTIES (ART. 63, RPC)

What are the indivisible penalties?

1. Reclusion perpetua
2. Death
3. Reclusion perpetua to death (Campanilla, 2017).

First rule: The law prescribes a single indivisible penalty

Whatever may be the nature or number of aggravating or mitigating circumstance that may have attended the commission of the crime, the court shall apply the prescribed penalty.

e.g.

a. Simple rape – the prescribed penalty is reclusion perpetua

b. Qualified rape – the prescribed penalty is death

The crime committed is simple rape, and the penalty is reclusion perpetua. There are two mitigating circumstances. Can you appreciate the two mitigating circumstances, to appreciate the special mitigating circumstance, for purposes of making the penalty one degree lower?

No, because the special mitigating circumstance consisting of two mitigating circumstances is found under Art. 64. There is no special circumstance in Art. 63 of the RPC.

Second rule: The law prescribes two (2) indivisible penalties

When the penalty is composed of two indivisible penalties, the following rules shall be observed:

- a. When there is only one aggravating circumstance, the greater penalty shall be imposed.
- b. When there is neither mitigating nor aggravating circumstances, the lesser penalty shall be imposed.
- c. When there is a mitigating circumstance and no aggravating circumstance, the lesser penalty shall be imposed.
- d. When both mitigating and aggravating circumstances are present, the court shall allow them to offset one another. **(BAR 1995)**

There is only one prescribed penalty consisting of two (2) indivisible penalties, that is reclusion perpetua to death for the following crimes under the RPC:

Applying the off-set rule, only one aggravating circumstance will remain. Thus, the greater penalty which is death is the proper imposable penalty. However, because of RA 9346, the penalty will be reduced to reclusion perpetua.

The crime is parricide. There are two (2) aggravating circumstance and two (2) mitigating circumstance. What is the proper imposable penalty?

Applying the off-set rule, no modifying circumstance will remain. Since there is neither mitigating nor aggravating circumstance, the lesser penalty which is reclusion perpetua is the proper imposable penalty.

NOTE: Under Administrative Circular No. 15-8-2 (August 4, 2015), there are two reclusion perpetua.

1. Reclusion perpetua as a reduced penalty – the penalty is death but it was reduced to reclusion perpetua because of RA 9346.

2. Reclusion perpetua as a prescribed penalty – reclusion perpetua is the penalty prescribed by law.

NOTE: Whether reclusion perpetua is a reduced penalty or a prescribed penalty, the accused is not eligible for parole. Meaning, the Indeterminate Sentence Law is not applicable.



RULES FOR THE APPLICATION OF DIVISIBLE PENALTIES (ART. 64, RPC)

What are the divisible penalties?

1. Penalty composed of three (3) periods;
2. Penalty not composed of three (3) periods;
3. Complex penalty;
4. Penalty without a specific legal form (Campanilla, 2017).

1. PENALTY COMPOSED OF THREE (3) PERIODS

When the penalty is composed of three (3) periods, the following rules shall be observed:

- a. When there is neither aggravating and no mitigating; the penalty in its medium period shall be imposed.
- b. When there is only a mitigating circumstance: the penalty in its minimum period shall be imposed.
- c. When there is only an aggravating circumstance: the penalty in its maximum period shall be imposed
- d. When there are aggravating and mitigating – the court shall offset those of one class against the other according to relative weight.
- e. Two or more mitigating and no aggravating – penalty next lower, in the period applicable, according to the number and nature of such circumstances.
- f. No penalty greater than the maximum period of the penalty prescribed by law shall be imposed, no matter how many aggravating circumstances are present.

Application of graduated scale (Art. 71, RPC)

The graduated scale is followed when the law prescribes a penalty lower or higher by one or more degrees than another given penalty.

SCALE 1	SCALE 2
1. Death	1. Perpetual or Temporary Absolute Disqualification
2. Reclusion Perpetua	2. Suspension from Public Office, the right to vote and to be voted for, the profession or calling
3. Reclusion Temporal	3. Public Censure
4. Prision Mayor	4. Fine
5. Prision Correccional	
6. Arresto Mayor	
7. Destierro	
8. Arresto Menor	
9. Public censure	
10. Fine	

Rule in increasing the penalty of fine by one or more degrees (Art. 75, RPC)

Fines shall be increased or reduced for each degree by $\frac{1}{4}$ of the maximum amount. The minimum amount prescribed by law shall not be changed.

Penalties imposed on principals, accomplices, accessories, in accordance to the stages of committing a felony (Art. 50-57, RPC)

	CONSUMMATED	FRUSTRATED	ATTEMPTED
PRINCIPALS	Penalty prescribed by law for the offense.	1 degree lower than the penalty prescribed by law	2 degrees lower than the penalty prescribed by law
ACCOMPLICES	1 degree lower than the penalty prescribed by law.	2 degrees lower than the penalty prescribed by law for a frustrated felony	3 degrees lower than the penalty prescribed by law for a frustrated felony
ACCESSORIES	2 degrees lower than the penalty prescribed by law	3 degrees lower than the penalty prescribed by law for an attempted felony	4 degrees lower than the penalty prescribed by law for an attempted felony



NOTE:

GR:

1. Penalties are imposed upon the principals.
2. Whenever the law prescribes a penalty for a felony in general terms, it shall be understood to apply to a consummated felony.

XPN: This shall not apply if:

1. The law expressly provides penalties for accomplices and accessories of a crime;
2. The law expressly provides penalties for frustrated and attempted stages

Additional penalties imposed to certain accessories (Art. 58, RPC)

Those accessories falling within the terms of par. 3, Art. 19 of this code who shall act with abuse of their public functions shall suffer an additional penalty of:

1. Absolute Perpetual Disqualification if the principal offender is guilty of a grave felony.
2. Absolute Temporary Disqualification if the offender is guilty of a less grave felony.

Penalties to be imposed upon principals when the crime consummated was different from that which was intended (Art. 49, RPC)**Rules:**

1. If the penalty prescribed for the felony committed is higher than the penalty prescribed for the felony originally intended, the penalty corresponding to the latter shall be imposed in its maximum period.
2. If the penalty prescribed for the felony committed is lower than the penalty prescribed for the felony originally intended, the penalty corresponding to the former shall be imposed in its maximum period.
3. The rule in the next preceding paragraph shall not apply if the acts committed by the guilty person shall constitute an attempt or frustration of another crime. If the law prescribes a higher penalty for either of the latter offenses, such penalty shall be imposed in its maximum period.

Penalties that may be simultaneously served

1. Perpetual absolute disqualification
2. Perpetual special disqualification
3. Temporary absolute disqualification
4. Temporary special disqualification
5. Suspension
6. *Destierro*
7. Public censure
8. Fine and bond to keep the peace
9. Civil interdiction
10. Confiscation and payment of costs

APPLICATION OF PENALTIES

**INDETERMINATE SENTENCE LAW
(RA 4103, AS AMENDED BY ACT NO. 4225)****APPLICATION ON THE IMPOSED SENTENCE****Indeterminate sentence**

A sentence with a minimum term and a maximum term of which the court is mandated to impose for the benefit of a guilty person who is not disqualified to avail therefore, when the maximum imprisonment exceeds 1 year.

The purpose of the indeterminate sentence law is to avoid prolonged imprisonment because it is proven to be more destructive than constructive to offenders.

In imposing a prison sentence for an offense punished by the RPC or special penal laws, the court shall sentence the accused to an indeterminate sentence, which has a maximum and a minimum term based on the penalty actually imposed.

Imposition of minimum or maximum term

The term minimum refers to the duration of the sentence which the convict shall serve as a minimum to be eligible for parole. The term maximum refers to the maximum limit of the duration that the convict may be held in jail. For special laws, it is anything within the inclusive range of prescribed penalty. Courts are given discretion in the imposition of the indeterminate penalty.

Application of the Indeterminate Sentence Law must be considered when required to solve penalties under Article 64 (Rules for the application of penalties which contain three periods). **(BAR 2014)**

Rules in imposing a penalty under the indeterminate sentence law (BAR 1999, 2005, 2009, 2010, 2013)

When penalty is imposed by RPC:

1. *The Maximum Term* – is that which in view of the attending circumstances could be properly imposed under the RPC.
2. *The Minimum Term* – is within the range of the penalty next lower to that prescribed by the RPC.



Prescribed penalty is what the penalty is without looking at the circumstances. As opposed to imposed penalty which takes into account the circumstances.

GR: The Indeterminate Sentence Law is mandatory in all cases.

XPN: if the accused will fall in any of the following exceptions:

1. if sentenced with a penalty of death or life imprisonment
2. if convicted of treason, conspiracy, proposal to commit treason
3. if convicted of misprision of treason, sedition, rebellion or espionage
4. if convicted of piracy
5. if the offender is a habitual delinquent
6. those who escaped from prison or evaded sentence
7. those who violated the terms of conditional pardon of the chief executive
8. where the maximum term of imprisonment does not exceed 1 year (important!)
9. if convicted by final judgement at the time of the effectivity of Act No. 4103
10. if penalized with suspension or destierro

Q: X was convicted of a complex crime of direct assault with homicide aggravated by the commission of the crime in a place where public authorities are engaged in the discharge of their duties. The penalty for direct assault is *prision correccional* in its medium and maximum period. What is the correct indeterminate penalty? (BAR 2012)

A: 10 years of *prision mayor* as minimum to 17 years & 4 months of *reclusion temporal* as maximum.

Explanation: 17 years and 4 months is the commencement of the duration of the maximum period of *reclusion temporal* while 10 years is part of *prision mayor*, the penalty next lower in degree to *reclusion temporal*.

NOTE: In determining penalties for a complex crime, the graver penalty shall be considered thus direct assault is there to confuse the examiner. What should be considered is the penalty for homicide since it is more grave. The maximum should not exceed what is prescribed by the penalty. The minimum should be a period less

than what is prescribed as a minimum for the penalty.

When penalty is imposed by Special Penal Law (BAR 1994)

1. *Maximum Term* – must not exceed the maximum term fixed by said law.
2. *Minimum Term* – must not be less than the minimum term prescribed by the same. (BAR 2003)

Bruno was charged with homicide for killing the 75-year old owner of his rooming house. The prosecution proved that Bruno stabbed the owner causing his death, and that the killing happened at 10 in the evening in the house where the victim and Bruno lived. Bruno, on the other hand, successfully proved that he voluntarily surrendered to the authorities; that he pleaded guilty to the crime charged; that it was the victim who first attacked and did so without any provocation on his (Bruno's) part, but he prevailed because he managed to draw his knife with which he stabbed the victim. The penalty for homicide is *reclusion temporal*. Assuming a judgment of conviction and after considering the attendant circumstances, what penalty should the judge impose? (BAR 2013)

Bruno should be sentenced to an indeterminate sentence penalty of *arresto mayor* in any of its period as minimum *toprisoncorreccional* in its medium period as maximum. Bruno was entitled to the privileged mitigating circumstances of incomplete self-defense and the presence of at least two ordinary mitigating circumstances (voluntary surrender and plea of guilt) without any aggravating circumstance under Art. 69 and 64(5) of the RPC respectively, which lowers the prescribed penalty for homicide which is *reclusion temporal* to *prisoncorreccional*.

Further Explanation

In this kind of question, the Bar examiner wants you to determine whether there was self-defense or not. The problem provides that the defense was able to prove that it was the man who first attacked Bruno; therefore, there was unlawful aggression. But there was no provocation coming from Bruno, therefore, there was a lack of sufficient provocation. So two elements of self-defense are present.

How about the 3rd element of self-defense, reasonable necessity of the means employed to prevent or repel the attack, is this present?

The 3rd element of self-defense is absent because based on the facts proven by Bruno, although it was the man who attacked Bruno first, he prevailed upon the man because he made use of a knife and stabbed the man. While the man attacked Bruno by means of his fist, it is not reasonably necessary for Bruno to make use of a knife in killing the man. So what we have is an incomplete self-defense.

Under paragraph 1 of Article 13, in case of incomplete self-defense, if aside from unlawful aggression, another element is present but not all, we have a privileged mitigating circumstance. Therefore, this *incomplete self-defense shall be treated as a privileged mitigating circumstance*.

The prosecution was able to prove that the man is 75 years old. Would you consider the aggravating circumstance of disrespect of age?

No. Even if Bruno killed the said 75 year-old man, there was no showing in the problem that he disrespected the age of the man.

Would you consider nighttime as an aggravating circumstance?

No. Even if the problem says that the crime was committed at 10 in the evening, it did not say whether the house was lighted or not. There was also no showing that the offender deliberately sought nighttime to commit the crime.

Would you consider dwelling?

No. In the said dwelling both Bruno and the victim are residing. Therefore, dwelling is not an aggravating circumstance because both of them are living in the same dwelling. It cannot be said that when Bruno killed the man, he disrespected the dwelling of the said man. Therefore, we have *no aggravating circumstance present*.

Take note that Bruno was able to prove voluntary surrender, voluntary plea of guilt, and then we have an incomplete self-defense — a privileged mitigating circumstance.

Applying these conclusions, we have *two (2) ordinary mitigating circumstances with one (1) privileged mitigating circumstance and with no aggravating circumstance*.

How do we compute the penalty?

1. Consider first the Privileged Mitigating Circumstance.

Whenever there is a privileged mitigating circumstance present, apply it first before computing the penalty. In this example, since we have incomplete self-defense, you have to lower the penalty by one degree because it is a privileged mitigating circumstance. Thus, it will become *prision mayor*.

2. Consider the Ordinary Mitigating Circumstance.

So now, there are two ordinary mitigating circumstances with no aggravating circumstance. Article 64 provides that when there are two mitigating with no aggravating, lower the penalty by one degree. Therefore, if you lower it by one degree, it is now *prision correccional*.

3. Determine the Maximum Sentence after considering all justifying, exempting, mitigating, and aggravating circumstances, if any.

You have already applied everything so it will become *prision correccional in its medium period*.

4. Determine the minimum term of the sentence.

You go one degree lower and that is *arresto mayor*. Therefore, *arresto mayor in its medium period* (or any period in the discretion of the court) is the minimum term of the sentence.

Q: Simon was arrested during a buy bust operation at Sto. Cristo, Guagua, Pampanga after he sold two marijuana tea bags for P40.00 to Sgt. Lopez, who acted as the poseur-buyer. Another two marijuana tea bags were found in possession of Simon. Simon was charged with a violation of Section 4, Article II of RA 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended, for the sale of the four marijuana tea bags with a total weight of only 3.8 grams. The trial court convicted Simon as charged but only in relation to the sale of the two marijuana tea bags, and sentenced him to suffer the penalty of life imprisonment, to pay a fine of P20,000.00, and to pay the costs.

A) Is the trial court correct in imposing the penalty of life imprisonment?

B) Should modifying circumstances be taken into account in this case?

C) Is Simon entitled to the application of the Indeterminate Sentence Law?

A:

A) NO.

As applied to the present case, Section 4 of RA 6425, as now further amended, imposes the penalty of *reclusion perpetua* to death and a fine ranging from P500,000.00 to P10,000,000.00 upon any person who shall unlawfully sell, administer, deliver, give away, distribute, dispatch in transit or transport any prohibited drug. That penalty, according to the amendment to Section 20 of the law, shall be applied if what is involved is 750 grams or more of indian hemp or marijuana; *otherwise*, if the quantity involved is less, the penalty shall range from *prision correccional* to *reclusion perpetua* depending upon the quantity.

In other words, there is here an overlapping error in the provisions on the penalty of *reclusion perpetua* by reason of its dual imposition, that is, as the maximum of the penalty where the marijuana is less than 750 grams, and also as the minimum of the penalty where the marijuana involved is 750 grams or more. The same error has been committed with respect to the other prohibited and regulated drugs provided in said Section 20. To harmonize such conflicting provisions in order to give effect to the whole law, the penalty to be imposed where the quantity of the drugs involved is less than the quantities stated in the first paragraph shall range from *prision correccional* to *reclusion temporal*, and not *reclusion perpetua*. This is also concordant with the fundamental rule in criminal law that all doubts should be construed in a manner favorable to the accused.

If the marijuana involved is below 250 grams, the penalty to be imposed shall be *prision correccional*; from 250 to 499 grams, *prision mayor*; and 500 to 749 grams, *reclusion temporal*. Parenthetically, fine is imposed as a conjunctive penalty only if the penalty is *reclusion perpetua* to death.

Now, considering the minimal quantity of the marijuana subject of the case at bar, the impossible penalty under RA 6425, as amended by RA 7659,

is *prision correccional*, to be taken from the medium period thereof pursuant to Article 64 of the Revised Penal Code (RPC), there being no attendant mitigating or aggravating circumstance.

B) YES.

In the past wherein it was held that, in imposing the penalty for offenses under special laws, the rules on mitigating or aggravating circumstances under the RPC cannot and should not be applied. A review of such doctrines as applied in said cases, however, reveals that the reason therefor was because the special laws involved provided their own specific penalties for the offenses punished thereunder, and which penalties were not taken from or with reference to those in the RPC.

The situation, however, is different where although the offense is defined in and ostensibly punished under a special law, the penalty therefor is actually taken from the RPC in its technical nomenclature and, necessarily, with its duration, correlation and legal effects under the system of penalties native to the RPC.

In the case of the Dangerous Drugs Act as now amended by RA 7659 by the incorporation and prescription therein of the technical penalties defined in and constituting integral parts of the three scales of penalties in the RPC, with much more reason should the provisions of the RPC on the appreciation and effects of all attendant modifying circumstances apply in fixing the penalty. Likewise, the different kinds or classifications of penalties and the rules for graduating such penalties by degrees should have supplementary effect on RA 6425, except if they would result in absurdities. Mitigating circumstances should be considered and applied only if they affect the *periods* and the *degrees* of the penalties *within rational limits*.

While modifying circumstances may be appreciated to determine the *periods* of the corresponding penalties, or even reduce the penalty by *degrees*, in no case should such graduation of penalties reduce the impossible penalty beyond or lower than *prision correccional*. It is for this reason that the three component penalties in the second paragraph of Section 20 shall each be considered as an independent principal penalty, and that the lowest penalty should in any event be *prision correccional* in order not to depreciate the seriousness of drug offenses.

C) YES.

Since drug offenses are not included in nor has Simon committed any act which would put him within the exceptions to said law and the penalty to be imposed does not involve *reclusion perpetua* or death; *provided, of course*, that the penalty as ultimately resolved will exceed one year of imprisonment.

RA 6425, as now amended by RA 7659, has unqualifiedly adopted the penalties under the RPC in their technical terms, hence with their technical signification and effects. In fact, for purposes of determining the *maximum* of said sentence, the Court applied the provisions of the amended Section 20 of said law to arrive at *prison correccional* and Article 64 of the RPC to impose the same in the medium period. Such offense, although provided for in a special law, is now in effect *punished by and under the RPC*.

Correlatively, to determine the minimum, we must apply the first part of Section 1 of the Indeterminate Sentence Law which directs that "in imposing a prison sentence for an offense punished by the RPC, or its amendments, the court shall sentence the accused to an indeterminate sentence the *maximum* term of which shall be that which, in view of the attending circumstances, could be properly imposed *under the rules of the RPC*, and the *minimum* which shall be within the range of the *penalty next lower to that prescribed by the RPC* for the offense."

It is thus both amusing and bemusing if, in the case at bar, Simon should be begrudged the benefit of a minimum sentence within the range of *arresto mayor*, the penalty next lower to *prison correccional* which is the maximum range the Court has fixed through the application of Articles 61 and 71 of the RPC. For, with fealty to the law, the court may set the minimum sentence at 6 months of *arresto mayor*, instead of 6 months and 1 day of *prison correccional*. The difference, which could thereby even involve only one day, is hardly worth the creation of an overrated tempest in the judicial teapot.

Therefore, in view of the foregoing, Simon must be sentenced to serve an indeterminate penalty of six (6) months of *arresto mayor*, as the minimum, to six (6) years of *prison correccional*, as the maximum thereof (*People v. Martin Simon*, G.R. No. 93028, July 29, 1994, *EN BANC*, Regalado, J.).

THREE-FOLD RULE ART. 70, RPC

Systems of penalties relative to two or more penalties imposed on one and the same accused

1. *Material accumulation system* - no limitation whatever. All the penalties for all violations were imposed even if they reached beyond the natural span of human life.
2. *Juridical accumulation system* - limited to not more than the three-fold length of time corresponding to the most severe and in no case exceed 40 years. **(BAR 2013)**
3. *Absorption system* - the lesser penalties are absorbed by the graver penalties. It is observed in the imposition of the penalty in complex crimes, continuing crimes, and specific crimes like robbery with homicide, etc.

Three-Fold Rule

Three-fold rule means that the maximum duration of a convict's sentence shall not be more than three times the length of time corresponding to the most severe of the penalties imposed upon him but in no case exceed 40 years.

NOTE: It is the Director of Prisons that shall compute and apply the Three-Fold Rule, NOT the judge.

Application of the Three-Fold Rule

The rule applies if a convict has to serve at least four sentences, continuously.

NOTE: All the penalties, even if by different courts at different times, cannot exceed three-fold of the most severe penalty.

Rule if the culprit has to serve 2 or more penalties (Art. 70, RPC)

If the culprit has to serve 2 or more penalties, he shall serve them simultaneously if the nature of the penalties will so permit. Otherwise, the penalties shall be served successively on the order of their severity as follows:

1. Death
2. *Reclusion perpetua*
3. *Reclusion temporal*
4. *Prison mayor*
5. *Prison correccional*



6. *Arresto Mayor*
7. *Arresto Menor*
8. *Destierro*
9. Perpetual absolute disqualification
10. Temporary absolute disqualification
11. Suspension from public office, the right to vote and be voted for, the right to follow profession or calling
12. Public censure

**COSTS
ART. 37, RPC**

Costs

Cost shall include *fees* and *indemnities* in the course of judicial proceedings.

To whom costs are chargeable

1. *In case of conviction* – chargeable to the accused.
2. *In case of acquittal* – costs are *de officio*; each party shall bear his own expenses.

No costs against the Republic

No costs shall be allowed against the Republic of the Philippines, unless otherwise provided by law (*Sec. 1, Rule 142, Rules of Court*).

Payment of costs is discretionary

Such matter rests entirely upon the discretion of courts. The Government may request the court to assess costs against the accused, but not as a right.

**PECUNIARY LIABILITIES
ART. 38, RPC**

Pecuniary liabilities of persons criminally liable (BAR 2005)

- a. Reparation of damage caused
- b. Indemnification of the consequential damages
- c. Fine
- d. Costs of proceedings

This article applies when the property of the offender is not sufficient to pay for all of his pecuniary liabilities.

The court CANNOT disregard the order of payment, pecuniary liabilities in this article must be observed.

Pecuniary penalties vis-à-vis Pecuniary liabilities (BAR 2005)

Pecuniary penalties are those which a convicted offender may be required to pay in money to the Government. These are fines and costs of proceedings. Pecuniary liabilities on the other hand are those which a convicted offender is required to pay in money to the offended party and to the government. They consist of: reparation of the damage caused, indemnification of consequential damages, fine, and costs of the proceedings.

Q: The murderers of Mr. Ylarde were convicted for his murder. His widow testified that Mr. Ylarde "has a net income of P16,000.00 a year as farmer, sari-sari store owner, driver and operator of two tricycles and caretaker of Hacienda Bancod." Aside from the testimony, no other receipt was provided. Should award for loss of earning capacity be given to the widow?

A: No. It is settled that the indemnity for loss of earning capacity is in the form of actual damages; as such, it must be proved by competent proof. By way of exception, damages for loss of earning capacity may be awarded in two instances: 1) the victim was self-employed and receiving less than the minimum wage under the current laws and no documentary evidence available in the decedent's line of business; and, 2) the deceased was employed as a daily wage worker and receiving less than the minimum wage. Since the case does not fall under any of the exceptions, the award cannot be given without documentary proof. (*People vs. Villar G.R. No. 202708, April 13, 2015*)

**SUBSIDIARY PENALTY
ART. 39, RPC**

Subsidiary penalty (BAR 2005)

Subsidiary personal liability is to be suffered by the convict who has no property with which to meet the fine, at the rate of one day for each amount equivalent to the **highest minimum wage rate prevailing in the Philippines at the time of the rendition of judgment of conviction** by the trial court (*RA 10159 approved on April 10, 2012*).

Imposition of subsidiary penalty

1. When there is a principal penalty of imprisonment or any other principal penalty and it carries with it a fine; or
2. When penalty is only a fine.

NOTE: A subsidiary penalty is not an accessory penalty. It is a penalty imposed upon the accused and served by him in lieu of the fine which he fails to pay on account of insolvency. The accused cannot be made to undergo subsidiary imprisonment unless the judgment *expressly* so provides.

SUBSIDIARY IMPRISONMENT ART. 39, RPC

Subsidiary imprisonment NOT an accessory penalty

Subsidiary imprisonment is not an accessory penalty, it is a principal penalty thus it has to be stated before the offender can benefit from it.

Rules as to subsidiary imprisonment

1. *Penalty imposed is prison correccional or arresto and fine* – subsidiary imprisonment, not to exceed 1/3 of the term of the sentence, and in no case to continue for more than one year. Fraction or part of a day, not counted.
2. *Penalty imposed is fine only* – subsidiary imprisonment:
 - a. *Not to exceed 6 months* – if prosecuted for *grave or less grave felony*;
 - b. *Not to exceed 15 days* – if prosecuted for *light felony*.
3. *Penalty imposed is higher than prison correccional* – no subsidiary imprisonment.
4. *Penalty imposed is not to be executed by confinement, but of fixed duration* – subsidiary penalty shall consist in the same deprivations as those of the principal penalty, under the same rules abovementioned.

There is no subsidiary penalty for nonpayment of damages to the offended party.

Requirement to pay the fine after the convict has suffered subsidiary personal liability

Notwithstanding the fact that the convict suffered subsidiary personal liability, he shall pay the fine in case his financial circumstances should improve.

Instances when subsidiary penalty is NOT imposed

1. There is no subsidiary penalty if the penalty imposed by the court is *prision mayor, reclusion temporal, or reclusion perpetua*. **(BAR 2013)**
2. No subsidiary penalty for nonpayment of:
 - a. Reparation of the damage caused
 - b. Indemnification of the consequential damages
 - c. The cost of the proceedings
3. When there is no fixed duration
4. Nonpayment of income tax

Applicability of subsidiary imprisonment to violations of special laws

Persons convicted of violation of special laws are liable to subsidiary imprisonment in case of insolvency in the payment of indemnity, except where the indemnity consists in unpaid internal revenue tax (*People v. Domalaon, C.A., 56 O.G. 5072, citing People v. Moreno, 60 G.R. No. 41036, October 10, 1934*).

PENALTY WITH INHERENT ACCESSORY PENALTIES ART. 40-44, RPC ART. 29, RPC

Accessory penalties that are inherently attached to principal penalties

1. *Death* when not executed by reason of commutation or pardon shall carry with it:
 - a. Perpetual Absolute Disqualification
 - b. Civil Interdiction during the first thirty (30) years following the date of the sentence.

NOTE: Such accessory penalties shall be continuously suffered by the convict even if the principal penalty has been pardoned; unless such penalties have been expressly remitted in the pardon.

2. *Reclusion perpetua and reclusion temporal* shall carry with it:
 - a. Civil Interdiction for life or during the period of the sentence.
 - b. Perpetual Absolute Disqualification which shall still be served even if the principal penalty has been pardoned, unless when the same has been expressly remitted in the pardon.



3. *Prision mayor shall carry with it:*
 - a. Temporary Absolute Disqualification
 - b. Perpetual Special Disqualification of the right to suffrage which the offender shall suffer even if the principal penalty has been pardoned, unless the same has been expressly remitted in the pardon.
4. *Prision correccional shall carry with it:*
 - a. Suspension from public office and the right to practice a profession or calling.
 - b. Perpetual Special Disqualification from the right of suffrage if the duration of the imprisonment shall exceed 18 months, which shall be suffered even if the principal penalty has been pardoned, unless the same has been expressly remitted in the pardon.
5. *Arresto shall carry with it suspension of the right to hold public office, and the right of suffrage during the term of the sentence.*

NOTE: The RPC does not provide for any accessory penalty for *destierro*.

COMPUTATION OF PENALTIES ART. 28, RPC

Rules for the computation of penalties

The following rules must be observed by the Director of Prisons or the warden when computing the penalties imposed upon the convicts:

1. *When the offender is in prison – duration of temporary penalties is from the day on which the judgment of conviction becomes final.*

Ratio: The duration of temporary penalties shall be computed only from the day the judgment of conviction becomes final, and *not from the day of his detention* because under Art. 24 the arrest and temporary detention of the accused is not considered a penalty.
2. *When the offender is not in prison – duration of penalty consisting in deprivation of liberty, is from the day that the offender is placed at the disposal of judicial authorities for the enforcement of the penalty.*
3. *Duration of other penalties – duration is from the day on which the offender commences to serve his sentence.*

Examples of temporary penalties

1. Temporary absolute disqualification.
2. Temporary special disqualification.
3. Suspension.

Applicability of the rules in cases of temporary penalties, when the offender is not under detention because he has been released on bail

The duration is from the day on which the offender commences to serve his sentence.

Examples of penalties consisting in deprivation of liberty

1. Imprisonment
2. *Destierro*

EXECUTION AND SERVICE OF PENALTIES ART. 78-88, RPC

Execution of penalty

No penalty shall be executed except by virtue of a final judgment (*RPC, Art. 78, par. 1*).

Penalties are executed only in the form prescribed by law and any other circumstances and incidents shall be expressly authorized thereby (*RPC, Art. 78, par. 2*).

Finality of judgment

A judgment becomes final fifteen (15) days after promulgation of the judgment when the accused does not appeal therefrom.

NOTE: However, if the defendant has expressly waived in writing his right to appeal, the judgment becomes final immediately (*Rules of Court, Rule 120 Sec. 7*).

Place of service for penalties of *reclusion perpetua*, *reclusion temporal*, *prision correccional*, and *arresto mayor* (Art. 86, RPC)

In the places and penal establishments provided by the Administrative Code.

Place of service of *arresto menor* (Art. 88, RPC)

1. In the municipal jail; or
2. In the house of the offender, but under the surveillance of an officer of the law whenever the court provides in the decision due to the health of the offender. But the reason is not satisfactory just because the offender is a respectable member of the community.

Service of sentence of defendant in his house (Art. 88, RPC)

Defendant may serve his sentence in his house when:

1. The penalty is *arresto menor*;
2. It is conditioned with surveillance by an officer of the law;
3. Either:
 - a. It is due to the health of the offender;
 - b. Other reasons satisfactory to the court.

Instances or situations in criminal cases wherein the accused either as an adult or as a minor, can apply for and/or be granted a suspended sentence (BAR 2006)

1. Where the accused became insane before sentence could be promulgated under Art. 79.
2. Where the offender, upon conviction by the trial court, filed an application for probation which has been granted (*Baclayon v. Mutia, G.R. No. L-59298, April 30, 1984*).
3. Where the offender needs to be confined in a rehabilitation center because of drug dependency although convicted of the crime charged.
4. Where the offender is a youthful offender under Art. 192 of PD 603.
5. Where the crime was committed when the offender is under 18 years of age and he is found guilty thereof in accordance with RA 9344, but the trial court subjects him to appropriate disposition measures as prescribed by the Supreme Court in the Rule on Juveniles in Conflict with the Law.
6. Under RA 9165.
 - a. First time minor offender - an accused is over 15 at the time of the commission of the offense but not more than 18 years of age at the time when judgment should have been promulgated after having been found guilty of said offense if he has not been previously convicted of violating any provision of RA 9165
 - b. He has not been previously committed to a Center or to the care of a DOH-accredited physician
 - c. The Board favorably recommends that his sentence be suspended.
7. When the sentence is death, its execution may be suspended or postponed by the Supreme Court, through the issuance of T.R.O. upon the ground of supervening events (*Echegaray v. Secretary of Justice, G.R. No. 132601, January 19, 1999*).

PROBATION LAW (PD 968)**DEFINITION OF TERMS****Probation**

It is a disposition under which a defendant, after conviction and sentence, is released subject to conditions imposed by the court and to the supervision of a probation officer.

NOTE: Probation only affects the criminal aspect of the case and has no bearing on his civil liability

Probation Officer

One who investigates for the court a referral for probation or supervises a probationer or both.

PROCESS**Purposes of the law**

1. Promote the correction and rehabilitation of an offender by providing him with individualized treatment;
2. Provide an opportunity for the reformation of a penitent offender which might be less probable if he were to serve a prison sentence; and
3. Prevent the commission of offenses.

GRANT OF PROBATION, MANNER AND CONDITIONS

Probation is a mere privilege and its grant rest solely upon the discretion of the court. It is exercised primarily for the benefit of the organized society and only incidentally for the benefit of the accused. The grant of probation is not automatic or ministerial (*Bernardo v. Balagot, G.R. No. 86561, November 10, 1992*).

Effect of filing for application for probation

A judgment of conviction becomes final when the accused files a petition for probation. However, the judgment is not executory until the petition for probation is resolved. The filing of the petition for probation is a waiver by the accused of his right to appeal the judgment of conviction.

NOTE: An order placing defendant on probation is not a sentence but a suspension of the imposition of sentence. It is an interlocutory judgment in nature.

Who can apply for probation

GR: Only those whose penalty does not exceed six years of imprisonment are qualified for probation, without regard to the nature of the crime. Hence, if the penalty is six years and one day, he is no longer qualified for probation.

XPNS:

1. First time minor offenders under RA 9165
2. Violation of the Revised Election Code

Availing the benefits of probation

The Trial Court may, after it shall have convicted and sentenced a defendant upon application by said defendant within the period for perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best; *Provided*, That no application for probation shall be entertained or granted if the defendant has perfected an appeal from the judgment of conviction. **(BAR 2014)**

NOTE: The accused cannot avail probation if he appeals his conviction irrespective of the purpose of the appeal even if it is only to question the propriety of the penalty imposed (*Sandoval, 2010*).

Availing the benefits of Probation Law if the sentence imposed is a mere fine

Probation may be granted whether the sentence imposes a term of imprisonment or a fine only.

Effect on accessory penalties once probation is granted

Accessory penalties are deemed suspended.

Conditions of probation

1. Present himself to the probation officer designated to undertake his supervision at such place as may be specified in the order within seventy-two hours from receipt of said order;
2. Report to the probation officer at least once a month at such time and place as specified by said officer;
3. The court may also require the probationer to:
 - a. Cooperate with a program of supervision;
 - b. Meet his family responsibilities;
 - c. Devote himself to a specific employment and not to change said employment without the prior written approval of the probation officer;

- d. Undergo medical, psychological or psychiatric examination and treatment and enter and remain in specified institution, when required for that purpose;
- e. Pursue a prescribed secular study or vocational training;
- f. Attend or reside in a facility established for instruction, recreation or residence of persons on probation;
- g. Refrain from visiting houses of ill-repute;
- h. Abstain from drinking intoxicated beverages to excess;
- i. Permit the probation officer or an authorized social worker to visit his home and place of work;
- j. Reside at premises approved by it and not to change his residence without its prior written approval;
- k. Satisfy any other condition related to the rehabilitation of the defendant and not unduly restrictive of his liberty or incompatible with his freedom of conscience; or
- l. Plant trees.

Sanctions imposed if the probationer commits any serious violation of the conditions of probation

1. The court may issue a warrant for the arrest of a probationer.
2. If violation is established, the court may:
 - a. Revoke his probation; or
 - b. Continue his probation and modify the conditions thereof. This order is not appealable.
3. If probation is revoked, the probationer shall serve the sentence originally imposed.

CRITERIA OF PLACING AN OFFENDER ON PROBATION

Criteria on determining whether an offender may be placed on probation

In determining whether an offender may be placed on probation, the court shall consider all information relative to the character, antecedents, environment, mental and physical condition of the offender, and available institutional and community resources.

When probation shall be denied

Probation shall be denied if the court finds that:

- a. The offender is in need of correctional treatment that can be provided most

effectively by his commitment to an institution;

- b. There is an undue risk that during the period of probation the offender will commit another crime; or
- c. Probation will depreciate the seriousness of the offense committed.

Remedy if the application for probation is denied

An order granting or denying probation shall not be appealable. Hence, the remedy is a Motion for Reconsideration and if denied, a petition for *certiorari*.

DISQUALIFIED OFFENDERS

Disqualification to avail the benefits of the probation law (BAR 2004)

1. Sentenced to serve a maximum term of imprisonment of more than six (6) years; **(BAR 1990, 1995, 2002)**
2. Convicted of subversion or any crime against the national security or the public order; **(BAR 1991, 1992, 1993)**
3. Who have previously been convicted by final judgment of an offense punishable by imprisonment of not less than one month and one day and/or a fine of not less than two hundred pesos;
4. Who have been once on probation under the provision of this Decree;
5. Who are already serving sentence at the time the substantive provisions of this Decree became applicable pursuant to Section 33 hereof;
6. If he appeals the judgment or conviction (*however see Colinares v. People, G.R. No. 182748, December 13, 2011*); or **(BAR 2013)**
7. If he is convicted of violation of Election offenses

NOTE: In multiple prison terms, those imposed against the accused found guilty of several offenses should not be added up, and their sum total should not be determinative of his disqualification from probation since the law uses the word "maximum" not "total" term of imprisonment (*Francisco v. CA, et. Al, G.R. No. 108747, April 6, 1995*).

Q: Arnel Colinares was found guilty of frustrated homicide by the RTC. On appeal, CA affirmed. On petition for review, SC ruled that he was only guilty of attempted homicide, which penalty is "probationable". Is Colinares

now entitled to apply for probation upon remand of the case to the lower court, even after he has perfected his appeal to a previous conviction (frustrated homicide) which was not "probationable"?

A: YES. What is clear is that, had the RTC done what was right and imposed on Arnel the correct penalty of two years and four months maximum, he would have had the right to apply for probation. Arnel did not appeal from a judgment that would have allowed him to apply for probation. He did not have a choice between appeal and probation. While it is true that probation is a mere privilege, the point is not that Arnel has the right to such privilege; he certainly does not have. What he has is the right to apply for that privilege. If the Court allows him to apply for probation because of the lowered penalty, it is still up to the trial judge to decide whether or not to grant him the privilege of probation, taking into account the full circumstances of his case (*Colinares v. People, G.R. No. 182748, December 13, 2011*).

PERIOD OF PROBATION

Period of probation

1. The period of probation of a defendant sentenced to a term of imprisonment of not more than one year shall not exceed two years, and in all other cases, said period shall not exceed six years.
2. When the sentence imposes a fine only and the offender is made to serve subsidiary imprisonment in case of insolvency, the period of probation shall not be less than nor be more than twice the total number of days of subsidiary imprisonment. **(BAR 2005)**

ARREST OF PROBATIONER

Court may issue a warrant of arrest against a probationer

The court may issue the warrant for violations of any condition of the probation.

Effect after the arrest of the probationer

He shall be immediately brought before the court for hearing, which may be informal and summary, of the violation charged. If the violation is established, the court may revoke or continue his probation and modify the conditions thereof. If



revoked, the court shall order the probationer to serve the sentence originally imposed. The order revoking the grant of probation or modifying the terms and conditions thereof shall not be appealable.

NOTE: The defendant may be admitted to bail pending the hearing and in such case, the provisions regarding release on bail of persons charged with a crime shall be applicable.

TERMINATION OF PROBATION; EXCEPTION

Termination of probation (BAR 2005)

The court may order the final discharge of the probationer upon finding that, he has fulfilled the terms and conditions of probation.

NOTE: The mere expiration of the period for probation does not, *ipso facto*, terminate the probation. Probation is not co-terminus with its period, there must be an order from the Court of final discharge, terminating the probation. If the accused violates the condition of the probation before the issuance of said order, the probation may be revoked by the Court (*Manuel Bala v. Martinez, 181 SCRA 459*).

Effects of termination of probation

1. Case is deemed terminated.
2. Restoration of all civil rights lost or suspended.
3. Fully discharges liability for any fine imposed.

Pardon vis-à-vis Probation

Pardon	Probation
Includes any crime and is exercised individually by the President.	Exercised individually by the trial court.
Merely looks forward and relieves the offender from the consequences of an offense of which he has been convicted; it does not work for the restoration of the rights to hold public office, or the right of suffrage, unless such rights are expressly restored by means of pardon.	It promotes the correction and rehabilitation of an offender by providing him with individualized treatment; provides an opportunity for the reformation of a penitent offender which might be less probable if he were to serve a prison sentence; and prevent the commission of

	offenses.
Exercised when the person is already convicted.	Must be exercised within the period for perfecting an appeal.
Being a private act by the president, it must be pleaded and proved by the person pardoned.	Being a grant by the trial court; it follows that the trial court also has the power to order its revocation in a proper case and under proper circumstances.
Does not alter the fact that the accused is a recidivist as it produces only the extinction of the personal effects of the penalty.	Does not alter the fact that the accused is a recidivist as it provides only for an opportunity of reformation to the penitent offender.
Does not extinguish the civil liability of the offender.	Does not extinguish the civil liability of the offender.

Persons disqualified to avail the benefits of probation (BAR 2010)

Any person convicted for drug trafficking or pushing under the Comprehensive Dangerous Drugs Act of 2002, regardless of the penalty imposed by the Court, cannot avail of the privilege granted by the Probation Law or Presidential Decree No. 968 as amended (*Sec. 24 of RA 9165 or CDDA of 2002*). Also, those convicted of violation of Election Code, and those who appealed the decision (but see *Colinares v. People, G.R. No. 182748, December 13, 2011*).

Persons qualified to avail the benefits of probation

A first time minor offender even if the penalty imposed is more than six (6) years. However, the crime must be illegal possession of dangerous drugs only.

**JUVENILE JUSTICE AND WELFARE
ACT OF 2006
(RA 9344)**

JUVENILE JUSTICE AND WELFARE SYSTEM

Juvenile Justice and Welfare System

Juvenile Justice and Welfare System refers to a system dealing with children at risk and children in conflict with the law, which provides child-appropriate proceedings, including programs and services for prevention, diversion, rehabilitation, re-integration and aftercare to ensure their normal growth and development (*RA 9344, Sec. 4*).

“Child in Conflict with the Law”

It refers to a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws [*RA 9344, Sec. 4(e)*].

Where a child is detained, the court may order the following

1. The release of the minor on recognizance to his/her parents and other suitable persons;
2. The release of the child in conflict with the law on bail; or
3. The transfer of the minor to a youth detention home/youth rehabilitation center.

NOTE: The court shall not order the detention of a child in a jail pending trial or hearing of his/her case except in youth detention homes established by local governments (*RA 9344, Sec. 35*).

Other alternative to imprisonment may be availed by a child in conflict with the law under RA 9344

The court may, after it shall have convicted and sentenced a child in conflict with the law, and upon application at any time, place the child on probation in lieu of service of sentence (*Sec. 42, RA 9344*).

CRIMINAL AND CIVIL LIABILITIES

MODIFICATION AND EXTINCTION OF CRIMINAL LIABILITY

Extinguishment of criminal liability

Criminal liability may be extinguished either, partially or totally.

Partial extinction of criminal liability

1. By conditional pardon;
2. By commutation of the sentence; and
3. For good conduct allowances which the culprit may earn while he is undergoing preventive imprisonment or serving his

sentence (*RPC, Art. 94 as amended by RA 10592*).

Nature of conditional pardon

When delivered and accepted, it is considered a *contract* between the sovereign power of the executive and the convict that the former will release the latter upon compliance with the condition.

Obligation incurred by a person granted with conditional pardon (Art. 95, RPC)

He shall incur the obligation of complying strictly with the conditions imposed therein, otherwise, his noncompliance with any of the conditions specified shall result in the revocation of the pardon and the provisions of Art. 159 on violation of conditional pardon shall be applied to him.

Nature of commutation of sentence

It is a change of the decision of the court made by the Chief Executive by *reducing the degree of the penalty* inflicted upon the convict, or by decreasing the length of the imprisonment or the amount of the fine.

Effect of commutation of sentence (Art. 96, RPC)

The commutation of the original sentence for another of a different length and nature shall have the legal effect of substituting the latter in the place of the former.

Cases where commutation is provided for by the Code

1. When the convict sentenced to death is over 70 years of age (*Art. 83*); and
2. When eight justices of the Supreme Court fail to reach a decision for the affirmance of the death penalty (*Reyes, 2008*).

Nature of good conduct allowances (Art. 97, RPC, as amended by RA 10592)

Allowances for good conduct are deductions from the term of sentence for good behavior. The good conduct of any offender qualified for credit for preventive imprisonment pursuant to Article 29 of the Code, or of any convicted prisoner in any penal institution, rehabilitation or detention center or any other local jail shall entitle him to the following deductions from the period of his sentence:

1. During the first two years of imprisonment, he shall be allowed a deduction of *twenty days for each month* of good behavior during detention;
2. During the third to the fourth year, inclusive, of his imprisonment, he shall be allowed a deduction of *twenty-three days for each month* of good behavior during detention;
3. During the following years until the tenth year, inclusive of his imprisonment, he shall be allowed a deduction of *twenty-five days for each month* of good behavior during detention;
4. During the eleventh and successive years of his imprisonment, he shall be allowed a deduction of *thirtydays (30) for each month* of good behavior during detention;
5. At any time during the period of imprisonment, he shall be allowed another deduction of *fifteen days*, in addition to numbers one to four hereof, for each month of study, teaching or mentoring service time rendered (Art. 97, as amended by RA 10592).

NOTE: An appeal by the accused shall not deprive him of entitlement to the above allowances for good conduct.(Art. 97, as amended by RA 10592).

6.

Person granting time allowance (Art. 99, RPC, as amended by RA 10592)

Whenever lawfully justified, the Director of the Bureau of Corrections, the Chief of the Bureau of Jail Management and Penology and/or the Warden of a provincial, district, municipal or city jail shall grant allowances for good conduct. Such allowances once granted shall not be revoked (Art. 99 as amended by RA 10592).

Special time allowance for loyalty of prisoner (Art. 98, RPC, as amended by RA 10592)

It is a deduction of one fifth (1/5) of the period of sentence of a prisoner who, having evaded the service of his sentence during the calamity or catastrophe mentioned in Art. 158, gives himself up to the authorities within 48 hours following the issuance of the proclamation by the President announcing the passing away of the calamity or catastrophe. A deduction of two-fifths of the period of his sentence shall be granted in case said prisoner chose to stay in the place of his confinement notwithstanding the existence of a calamity or catastrophe enumerated in Article 158 of this Code (Art. 98 as amended by RA 10592).

Parole

Parole consists in the *suspension* of the sentence of a convict after serving the minimum term of the indeterminate penalty, without granting a pardon, prescribing the terms upon which the sentence shall be suspended (Reyes, 2008).

Parole system cannot exist without the indeterminate sentence law.

Conditional pardon vis-à-vis Parole

CONDITIONAL PARDON	PAROLE
It may be given at any time after final judgment by the Chief Executive.	It may be given after the prisoner has served the minimum penalty by the Board of Pardons and Parole under the provisions of the Indeterminate Sentence Law.
For violation of the conditional pardon, the convict may be rearrested or reincarcerated by the Chief Executive or may be prosecuted under Art. 159 of the Code.	For violation of the parole, the convict cannot be prosecuted under Art. 159. He can be rearrested and reincarcerated to serve the unserved portion of his original penalty. NOTE: The mere commission, not conviction by the court, of any crime is sufficient to warrant the parolee's arrest and reincarceration (Guevarra, in Reyes, 2008).

Total extinguishment of criminal liability (Art. 89, RPC) (BAR 1990, 1992, 2000, 2004, 2009)

Art. 89 provides for the following:

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment; **(BAR 2013)**
2. By service of sentence;
3. By prescription of the crime;
4. By prescription of the penalty;
5. By marriage of the offended woman in cases of seduction, abduction, rape and acts of lasciviousness, as provided in Art. 344 of the RPC.

6. By absolute pardon; and
7. By amnesty, which completely extinguishes the penalty and all its effects. Extinction of criminal liability does not necessarily mean that civil liability is also extinguished (*Petralba v. Sandiganbayan*, G.R. No. 81337, August 16, 1991).
8. As an effect of final discharge of probation

Causes of extinction from criminal liability v. the causes of justification or exemption

The causes of the extinction *arise* after the commission of the offense while the causes of justification or exemption arise from circumstances existing either *before* the commission of the crime or *at the moment* of its commission (*Reyes*, 2008).

PRESCRIPTION OF CRIMES

Nature of prescription of a crime/penalty

The State or the People lose the right to prosecute the crime or to demand service of the penalty imposed (*Santos v. Superintendent*, G.R. No. 34334, November 28, 1930).

Prescription of crimes (Art. 90, RPC)(BAR 1994, 1997, 2004, 2010)

Those punishable by:

1. Death, *reclusion perpetua*, *reclusion temporal* in twenty (20) years;
2. Other afflictive penalties (*prision mayor*) in fifteen (15) years;
3. Correctional penalty (*prision correccional*) in ten (10) years;
4. *Arresto mayor* in five (5) years;
5. Light offenses in two (2) months.

When the penalty fixed by law is a compound one, the highest penalty shall be made the basis of the application of prescription (*Art. 90, RPC*).

Rule where the last day of the prescriptive period falls on a Sunday or a legal holiday

In *Yapdiangco v. Buencamino*, the Court said that in such a case, the information may no longer be filed the next day as the crime has already prescribed (*G.R. No. L-28841, June 24, 1983*).

Prescription of the crimes of oral defamation and slander (BAR 1994, 1997, 2004, 2010)

Distinction should be made between simple and grave slander. Grave slander prescribes in six (6) months while simple slander in two (2) months.

Prescription of the crimes punishable by *destierro*

Classified as a correctional penalty under Art. 25, and according to Art. 90, ten (10) years should be the prescription period (*Dalao v. Geronimo*, G.R. No. L-5969, April 29, 1953).

Prescription of the crimes punishable by fines

Fines are also classified as afflictive, correctional, or light penalty under Art. 26. That is, in 15 years, 10 years, and 2 months, respectively.

The subsidiary penalty for non-payment of the fine should not be considered in determining the period of prescription of such crimes (*People v. Basalo*, 101 Phil. 57). In addition, in light felonies when a fine of P200 is also provided, such fine should not be considered correctional.

Basis for prescription when fine is an alternative penalty higher than the other penalty which is by imprisonment

Prescription herein is based on fine (*People v. Basalo*, *supra*).

NOTE: The ruling in *Basalo* applies even if the penalty is *arresto mayor* and fine.

Prescriptive period of offenses punished under special laws and municipal ordinances

Act No. 3763, amending No. 3326, provides:

1. Offenses punished only by a fine or by imprisonment for *not more than one month* — after one year;
2. Offenses punished by imprisonment for *more than one month, but less than two years* — after 4 years;
3. Offenses punished by imprisonment for two years or more but less than six years — after 8 years;
4. Offenses punished by imprisonment for six years or more — after 12 years;
5. Offenses under Internal Revenue Law — after 5 years;
6. Violation of municipal ordinances — after 2 months;
7. Violations of the regulations or conditions of certificate of convenience by the Public



Service Commission — after 2 months (*Reyes, 2008*).

NOTE: Act 3326 is not applicable where the special law provides for its own prescriptive period (*People v. Ramos, 83 SCRA 1*).

Running of the prescriptive periods for violations penalized by special laws and ordinances

Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment (*Act No. 3326, Sec. 2*).

Prescription does not divest court of jurisdiction; it is a ground for acquittal of the accused. Thus, the court must exercise jurisdiction, and not inhibit itself (*Santos v. Superintendent, 55 Phil. 345*).

Interruption of the running of the prescriptive period for crimes or violations punishable by the RPC, special law & ordinance

The running of the prescriptive period shall be interrupted:

1. Crime punishable by the RPC – interrupted upon the filing of the case before the fiscal's office.
2. Crime punishable by special law – interrupted upon the filing of the case before the fiscal's office even for purposes of preliminary investigation.
3. Violation of municipal ordinance – interrupted upon the filing of the case before the appropriate court

Determining prescription of offenses (Art. 91, RPC)

The period of prescription commences to run from the day the crime is committed

1. The *period of prescription* commences to run from the day on which the *crime is discovered* by the offended party, the authorities or their agents.
2. It is *interrupted* by the filing of the complaint or information.
3. It commences to run again when such proceedings *terminate without* the accused being convicted or acquitted or are

unjustifiably stopped for any reason not imputable to him.

4. The term of prescription shall *not run* when the offender is *absent* from the Philippines.

NOTE: The term "proceedings" should now be understood to be either executive or judicial in character: *executive* when it involves the investigation phase; and, *judicial* when it refers to the trial and judgment stage. With this clarification, any kind of investigative proceeding instituted against the guilty person, which may ultimately lead to his prosecution should be sufficient to toll prescription (*Panaguiton, Jr. v. DOJ, G.R. No. 167571, November 25, 2008*).

Situations which do not follow Art. 91 (Computation of prescription of offenses)

1. *Continuing crimes* – prescriptive period will start to run only at the termination of the intended result.
2. *In crimes against false testimony* – prescriptive period is reckoned from the day a final judgment is rendered and not at the time when the false testimony was made.
3. *Election offense* –
 - a. If discovery of the offense is incidental to judicial proceedings, prescription begins when such proceeding terminates; or
 - b. From the date of commission of the offense.

NOTE: In computing the period of prescription, the first day is excluded and the last day is included. (Art. 13, NCC)

Q: One fateful night in January 1990, while 5-year old Albert was urinating at the back of their house, he heard a strange noise coming from the kitchen of their neighbor and playmate, Ara. When he peeped inside, he saw Mina, Ara's stepmother, very angry and strangling the 5-year old Ara to death. Albert saw Mina carry the dead body of Ara, place it inside the trunk of the car and drive away. The dead body of Ara was never found. Mina spread the news in the neighborhood that Ara went to live with her grandparents in Ormoc City. For fear of his life, Albert did not tell anyone, even his parents and relatives, about what he witnessed. Twenty and a half (20 & ½) years after the incident, and right after his graduation in Criminology, Albert reported the crime to NBI authorities. The crime of homicide prescribes in 20 years. Can the State still prosecute Mina for the death of Ara

despite the lapse of 20 and 1/2 years? (BAR 2000)

A: YES, the State can still prosecute Mina for the death of Ara despite the lapse of 20 and ½ years. Under Article 91, RPC, the period of prescription commences to run from the day on which the crime is discovered by the offended party, the authorities or their agents. In the case at bar, the commission of the crime was known only to Albert, who was not the offended party nor an authority or an agent of an authority. It was discovered by the NBI authorities only when Albert revealed to them the commission of the crime. Hence, the period of prescription of 20 years for homicide commenced to run only from the time Albert revealed the same to the NBI authorities.

Q: A killed his wife and buried her in the backyard. He immediately went into hiding in the mountains. Three years later, the bones of A's wife were discovered by X, the gardener. Since X had a standing warrant of arrest, he hid the bones in an old clay jar and kept quiet about it. After two years, Z, the caretaker, found the bones and reported the matter to the police. After 15 years of hiding, A left the country but returned 3 years later to take care of his ailing sibling. Six years thereafter, he was charged with parricide, but he raised the defense of prescription.

- a. Under the Revised Penal Code, when does the period of prescription of a crime commence to run?
- b. When is it interrupted?
- c. Is A's defense tenable? Explain. (BAR 2010)

A:

- a. Under Art. 91 of the RPC, the period of prescription commences to run upon discovery of the crime by the offended party, the authorities, or their agent.
- b. It is interrupted upon filing of the complaint or information in court.
- c. No, parricide prescribes in 20 years. The period of prescription started only when Z reported the matter to the police, which is equivalent to 10 years of hiding from the time of reporting to Z. The period of three years shall not be counted since he is absent from the Philippines. The filing of the charge 6 years thereafter is well within the prescriptive period.

**PRESCRIPTION OF PENALTIES
ART. 92, RPC**

Prescription of penalties (Art. 92, RPC) (BAR 1993, 1994, 1997, 2004, 2010)

1. Death and *reclusion perpetua* in twenty (20) years;
2. Other afflictive penalties (*reclusion temporal* to *prision mayor*) in fifteen (15) years;
3. Correctional penalty (*prision correccional*) in ten (10) years;
4. *Arresto mayor* in five (5) years; and
5. Light penalties in one (1) year.

Rules in prescription of penalties (Sec. 93)

1. The period of prescription of penalties commences to run *from the date* when the *culprit evaded the service* of his sentence. **(BAR 2015)**
2. It is *interrupted* if the convict—
 - a. Gives himself up,
 - b. Be captured,
 - c. Goes to a foreign country with which we have no extradition treaty **(BAR 2015)**, or
 - d. Commits another crime *before* the expiration of the period of prescription.

NOTE: The *acceptance* of a conditional pardon also *interrupts* the prescriptive period, likening such acceptance to the case of one who flees from this jurisdiction (*People v. Puntillas, G.R. No. 45269*).

Period of prescription of penalties commence to run again

When the convict escapes *again, after having been captured and returned to prison* (Reyes, 2008)

Elements of prescription of penalties

1. That the penalty is imposed by *final* sentence;
2. That the convict *evaded* the service of the sentence by escaping during the term of his sentence;
3. That the convict who escaped from prison *has not* given himself up, or been captured, or gone to a foreign country with which we have no extradition treaty, or committed another crime; and
4. That the penalty has prescribed because of the lapse of time from the date of the evasion



of the service of the sentence by the convict (*Reyes, 2008*).

Q: Petitioner Adelaida Tanega failed to appear on the day of the execution of her sentence. On the same day, respondent judge issued a warrant for her arrest. She was never arrested. More than a year later, petitioner through counsel moved to quash the warrant of arrest, on the ground that the penalty had prescribed. Petitioner claimed that she was convicted for a light offense and since light offenses prescribe in one year, her penalty had already prescribed. Is the motion meritorious?

A: NO, the penalty has not prescribed as she did not evade her service of sentence. For purpose of prescription of penalties, Art. 93 of the Revised Penal Code, which provides that the prescription of penalties “shall commence to run from the date when the culprit should evade the service of his sentence,” must be understood in the light of Art. 157, as the concept of evasion of sentence is readily provided for in this Article (*Tanega v. Masakayan, G.R. No. 141718, January 21, 2005*).

Prescription of crimes vis-à-vis Prescription of penalties

PREScription OF CRIMES	PREScription OF PENALTIES
Loss or forfeiture of the State to prosecute.	Loss of forfeiture of the State to enforce judgment.
Starts counting upon discovery of the commission of the crime.	Starts counting upon the escape or evasion of service of sentence.
Mere absence from the Philippines interrupts the running of the prescription.	Absence from the Philippines interrupts the period only when he goes to a foreign country without extradition treaty with us.
Commission of another crime before the expiration of the period does not interrupt prescription.	Commission of another crime before expiration of the period interrupts the prescription.

PARDON BY THE OFFENDED PARTY

GR: Pardon by the offended party does not result to extinguishment of criminal action. A crime committed is an offense against the State. In criminal cases, the intervention of the aggrieved parties is limited to being witnesses for prosecution.

XPN: Pardon by an offended party in the crimes of *adultery* and *concubinage* will be a bar to criminal prosecution, *provided*, they pardoned both offenders. *Provided further*, it must be made before the institution of criminal prosecution. Pardon here may be implied (*Art. 344*).

In the crimes of *seduction*, *abduction*, *rape* or *acts of lasciviousness*, there shall be no criminal prosecution if the offender has been pardoned by the offended party or her parents, grandparents or guardian. *Provided*, the pardon in such cases must be *express*.

NOTE: Pardon by the wife in favor of the husband found guilty of raping her extinguishes the penalty.

Rule on extinguishment of criminal liability by the marriage of the offended woman to her offender in seduction, abduction, rape and acts of lasciviousness

The extinguishment of criminal liability by the marriage of the offended woman to her offender in seduction, abduction, rape and acts of lasciviousness is not an absolute rule. The marriage must be contracted in good faith. Hence, a marriage contracted only to avoid criminal liability is devoid of legal effects (*People v. Santiago, 51 Phil. 68*).

Compromise does NOT extinguish criminal liability

A crime is a public offense which must be prosecuted and punished by the Government on its own motion even though complete reparation should have been made of the damage suffered by the offended party (*People v. Benitez, 59 O.G. 1407*).

NOTE: There may be a compromise upon the civil liability arising from an offense; but such compromise shall not extinguish the public action for the imposition of the legal penalty (*NCC, Art. 2034*).

PARDON BY THE CHIEF EXECUTIVE

Pardon

It is an act of grace proceeding from the power entrusted with the execution of the laws which exempts the individual on whom it is bestowed from the punishment the law inflicts for the crime he has committed.

A pardon, whether absolute or conditional, is in the nature of a deed, for the validity of which is an indispensable requisite. Once accepted by the grantee, the pardon already delivered may not be revoked by the granting authority (*Reyes, 2008*).

Effects of pardon by the President

1. **GR:** A pardon shall not restore the right to hold public office or the right of suffrage.

XPN: When either or both rights are expressly restored by the terms of the pardon.

2. It shall not exempt the culprit from the payment of the civil indemnity. The pardon cannot make an exception to this rule.

Limitations upon the exercise of the pardoning power

1. The power can be exercised only *after* conviction; and
2. Such power does not extend to cases of impeachment.

Extinguishment of the effect of the accessory penalties attached to it by pardon of the principal penalty

GR: Pardon of the principal penalty does not extinguish the effect of the accessory penalties attached to it. When the principal penalty is remitted by pardon, only the effect of that principal penalty is extinguished. The rights are not restored unless expressly restored by the terms of the pardon.

XPN: When an *absolute pardon* is granted *after* the term of imprisonment has expired, it removes all that is left of the consequences of conviction (*Cristobal v. Labrador, G.R. No. L-47941, December 7, 1940*).

Pardon by the Chief Executive vis-à-vis Pardon by the offended party (BAR 1994)

PARDON BY THE CHIEF EXECUTIVE	PARDON BY THE OFFENDED PARTY
It extinguishes the criminal liability of the offender.	It does not extinguish criminal liability of the offender.
It cannot exempt the offender from the payment of the civil indemnity.	Offended party can waive the civil liability which the offender must pay.
It is granted only after conviction and may be extended to any of the offenders.	Pardon should be given before the institution of criminal prosecution and must be extended to both offenders (<i>RPC, Art. 344</i>).

AMNESTY

Amnesty

It is an act of sovereign power granting oblivion or a general pardon for a past offense, and is rarely, if ever exercised in favor of a single individual, and is usually exerted in behalf of persons, who are subject to trial, but have not yet been convicted (*Brown v. Walker, 161 U.S. 602*).

Pardon vis-à-vis Amnesty (BAR 2006)

In pardon, the convict is excused from serving the sentence but the effects of conviction remain unless expressly remitted by the pardon; hence, for pardon to be valid, there must be a sentence already final and executory at the time the same is granted. Moreover, the grant is in favor of individual convicted offenders, not to a class of convicted offenders; and the crimes subject of the grant may be common crimes or political crimes. The grant is a private act of the Chief Executive which does not require the concurrence of any other public officer.

In amnesty, the criminal complexion of the act constituting the crime is erased, as though such act was innocent when committed; hence the effects of the conviction are obliterated. Amnesty is granted in favor of a class of convicted offenders, not to individual convicted offenders; and the crimes involved are generally political offenses not common crimes. Amnesty is a public act that requires concurrence of the Philippine Senate. (**BAR 2015**)

Q: A, while serving sentence for homicide escaped but was re-arrested, and was



sentenced for evasion of service of sentence. Later on, he was granted absolute pardon for homicide. He now claims that the pardon includes the evasion of service since the latter crime occurred because of Homicide. Is A's contention correct?

A: NO. Pardon by the Chief Executive must specify the crime and does not include those not specified in the pardon.

CIVIL LIABILITY

PERSONS CIVILLY LIABLE FOR FELONIES

GR: Every person criminally liable for a felony is also civilly liable (*RPC, Art. 100*).

XPNS:

1. If there is no damage caused by the commission of the crime, the offender is not civilly liable.
2. There is no private person injured by the crime.

Basis of civil liability

A crime has dual character: (1) as an offense against the state because of the disturbance of social order; and (2) as an offense against the private person injured by the crime. In the ultimate analysis, what gives rise to the civil liability is really the obligation of everyone to repair or to make whole the damage caused to another by reason of his act or omission, whether done intentionally or negligently and whether or not punishable by law (*Occena v. Icamina, G.R. No. 82146, January 22, 1990*).

Q: Since a person criminally liable is also civilly liable, does his acquittal in the criminal case mean extinction of his civil liability?

A: NO, civil liability may exist, although the accused is not held criminally liable, in the following cases:

1. Acquittal on reasonable doubt (*NCC, Art. 29*).

NOTE: There is no need for a separate civil action. The reason is the accused has been accorded due process. To require a separate civil action would mean needless clogging of court dockets and unnecessary duplication of litigation with all its attendant loss of time, effort, and money on the part of all concerned (*Padilla v. Court of Appeals, G.R. No. L-39999, May 31, 1984*).

2. Acquittal from a cause of non-imputability.

XPN: The exemption from criminal liability in favor of an imbecile or an insane person, and a person under fifteen years of age, or one who over fifteen but under eighteen years of age, who has acted without discernment, and those acting under compulsion of an irresistible force or under the impulse of an uncontrollable fear of an equal or greater injury does not include exemption from civil liability (*RPC, Art. 101*).

3. Acquittal in the criminal action for negligence does not preclude the offended party from filing a civil action to recover damages, based on the new theory that the act is a quasi-delict.
4. When there is only civil responsibility.
5. In cases of independent civil actions (*NCC, Articles 31, 32, 33, and 34*).

CIVIL LIABILITY OF PERSONS EXEMPT FROM CRIMINAL LIABILITY

GR: Exemption from criminal liability does not include exemption from civil liability.

XPNS:

1. No civil liability in paragraph 4 of Article 12 (injury caused by mere accident).
2. No civil liability in paragraph 7 of Article 12 (failure to perform an act required by law when prevented by some lawful or insuperable cause).

Persons civilly liable for the acts of an insane or minor

If the persons having legal authority or control over the insane or minor are at fault or negligent, then they are the persons civilly liable for the acts of the latter.

NOTE: If there is no fault or negligence on their part; or even if at fault or negligent but insolvent; or should there be no person having such authority or control, then the insane, imbecile or such minor shall respond with their own property not exempt from execution.

Persons civilly liable for acts committed by persons acting under irresistible force or uncontrollable fear

The person using violence or causing the fear is primarily liable.

If there be no such persons, those doing the act shall be liable secondarily.

CIVIL LIABILITY OF PERSONS UNDER JUSTIFYING CIRCUMSTANCES

GR: There is no civil liability in justifying circumstances.

XPN: In par. 4 of Art. 11 of RPC, there is civil liability, but the person civilly liable is the one benefited by the act which causes damage to another.

SUBSIDIARY CIVIL LIABILITY OF INNKEEPERS, TAVERNKEEPERS, AND PROPRIETORS OF ESTABLISHMENTS

Elements under paragraph 1 of Art. 102. RPC

1. That the innkeeper, tavernkeeper or proprietor of establishment or his employee committed a violation of municipal ordinance or some general or special police regulation;
2. That a crime is committed in such inn, tavern, or establishment; and
3. That the person criminally liable is insolvent.

Elements under paragraph 2 of Art. 102. RPC

1. The guests notified in advance the innkeeper or the person representing him of the deposit of their goods within the inn or house;
2. The guests followed the directions of the innkeeper or his representative with respect to the care of and vigilance over such goods; and
4. Such goods of the guests lodging therein were taken by robbery with force upon things or theft committed within the inn or house.

GR: No liability shall attach in case of robbery with violence against or intimidation of persons.

XPN: When it is committed by the innkeeper's employees, there is civil liability.

SUBSIDIARY CIVIL LIABILITY OF OTHER PERSONS

Liability of employer, teacher, or person or corporation (Art. 103 of the RPC)

1. The employer, teacher, or person or corporation is engaged in any kind of industry;

2. Any of their servants, pupils, workmen, apprentices or employees commits a felony while in the discharge of their duties; and
5. The said employee is insolvent and has not satisfied his civil liability.

NOTE: The subsidiary civil liability arises only after conviction of the employee in the criminal action (*Baza Marketing Corp. v. Bolinao Sec. & Inv. Services, Inc.*, G.R. No. L-32383, September 30, 1982).

NOTE: The subsidiary liability may be enforced only upon a motion for the subsidiary writ of execution against the employer and upon proof that employee is insolvent (*Basilio v. Court of Appeals*, G.R. No. 113433, March 17, 2000).

NOTE: A hospital is not engaged in industry; hence, not subsidiary liable for acts of nurses (*Clemente v. Foreign Mission Sisters*, CA 38 O.G. 1594).

Q: X, the chauffeur or driver of the car owned by Y, bumped the car driven by Z. X was found guilty but was insolvent. Is Y subsidiary liable?

A: NO, Y is a private person who has no business or industry and uses his automobile for private persons (*Steinmetz v. Valdez*, G.R. No. 47655, April 28, 1941).

Q: Can the persons mentioned in Art. 103 invoke the defense of diligence of a good father of a family?

A: NO, it will be seen that neither in Art. 103 nor any other article of the RPC, is it provided that the employment of the diligence of a good father of a family in the selection of his employees will exempt the parties secondarily liable for damages (*Arambulo v. Manila Electric Company*, G.R. No. L-33229, October 23, 1930).

WHAT CIVIL LIABILITY INCLUDES

What is included in civil liability

1. Restitution
2. Reparation of damage caused
3. Indemnification for consequential damages

Civil liabilities (Art. 104)_vs. Pecuniary liabilities (Art. 38)

CIVIL LIABILITIES	PECUNIARY LIABILITIES
Both include (a) reparation of the damage caused; and (b) indemnification for consequential damages	



Includes restitution	Does not include restitution
Does not include fine and costs of the proceedings	Includes fine, and the costs of the proceedings

RESTITUTION

Restitution of the thing itself must be made whenever possible, with the allowance for any deterioration or diminution of value as determined by the court (*RPC, Art. 105, par. 1*).

NOTE: If restitution cannot be made by the offender (Art. 105), or by his heirs (108), the law allows the offended party *reparation* (Art. 106). In either case, indemnity for consequential damages may be required (Art.107).

Q: Can restitution be made even if the thing is already found in the possession of a third person who has acquired it by lawful means?

GR: YES, The thing itself shall be restored, even though it be found in the possession of a third person who has acquired it by lawful means, saving to the latter his action against the proper person who may be liable to him (*RPC, Art. 105 par. 2*).

XPN: Art. 105 is not applicable in cases in which the thing has been acquired by the third person in the manner and under the requirements which, by law, bar an action for its recovery (*RPC, Art. 105 par. 3*).

1. An innocent purchaser for value for property covered by a Torrens Title, cannot be required to return the same to its owner unlawfully deprived of it
2. When the sale is authorized, the property cannot be recovered.

Q: If the property involved is a fungible thing, can the defendant return to the creditor the same amount of the thing owed, of the same kind or species and quality?

A: NO, the convict cannot, by way of restitution, give to the offended party a similar thing of the same amount, kind or species and quality.

The civil liability is not governed by the Civil Code but by Articles 100-111 of the Penal Code. The sentence should be for the return of the very thing taken (restitution), or, if it cannot be done, for the payment of the value (reparation). The purpose of

the law is to place the offended party as much as possible in the same condition as he was before the offense was committed against him (*People v. Montesa, G.R. No. 181899, November 27, 2008*).

NOTE: Under the Civil Code, the person who has not lost any personal property or has been unlawfully deprived thereof cannot obtain its return without reimbursing the price paid therefor, only when the possessor: (a) acquired it in good faith; and (b) at a public sale.

Q: A was convicted of estafa for having pawned the jewels which had been given to him by B to be sold on commission. Can B file a petition to require the owner of the pawnshop to restore said jewels?

A: YES, the owner of the pawnshop may be obliged to make restitution of the jewels, because although he acted in good faith, he did not acquire them at a public sale (*Varela v. Finnick, G.R. No. L-3890, January 2, 1908*).

REPARATION

How determined?

The court shall determine the amount of damage, taking into consideration:

1. The price of thing, whenever possible; and
2. Its special sentimental value to the injured party (*RPC, Art. 106*).

NOTE: Reparation will be ordered by the court if restitution is not possible.

It is limited to those caused by and flowing from the commission of the crime.

Q: Does the payment of an insurance company relieve the accused of his obligation to pay damages?

A: NO, the payment by the insurance company was not made on behalf of the accused, but was made pursuant to its contract with the owner of the car. But the insurance company is subrogated to the right of the offended party as regards the damages.

INDEMNIFICATION

What is included?

Indemnification of consequential damages shall include:



1. Those caused the injured party
2. Those suffered by his family or by a third person by reason of the crime (*RPC, Art. 107*).

Obligation to make restoration, reparation for damages, or indemnification for consequential damages and action to demand the same

Q: Who has the obligation?

A: The obligation to make restoration or reparation for damages and indemnification for consequential damages devolves upon the heirs liable (*RPC, Art. 108, par. 1*).

NOTE: The heirs of the person liable has no obligation if restoration is not possible and the deceased has left no property.

Q: Who may demand?

A: The action to demand restoration, reparation and indemnification likewise descends to the heirs of the person injured (*RPC, Art. 108, par. 2*).

Apportionment of Civil Liability

If there are two or more persons civilly liable for a felony, the courts shall determine the amount for which each must respond (*RPC, Art. 109*).

SEVERAL AND SUBSIDIARY LIABILITY OF PRINCIPALS, ACCOMPLICES, AND ACCESSORIES OF FELONY

The principals, accomplices and accessories, each within their respective class, shall be severally liable (*in solidum*) among themselves for their quotas, and subsidiarily for those of the other persons liable. (*RPC, Art. 110 par. 1*).

Q: How is the subsidiary civil liability enforced?

A: The subsidiary liability shall be enforced:

First, against the property of the principals;
Next, against that of the accomplices; and
Lastly, against that of the accessories (*RPC, Art. 110 par. 2*).

Q: A stole a diamond ring worth P1000 and gave it to B, who not knowing the illegal origin of the sale, accepts it. B later sells the ring for P500 to Y, a foreigner who left the country.

In case A is insolvent, can B, a person who participated gratuitously in the proceeds of a felony, be subsidiarily liable?

A: YES, any person who has participated gratuitously in the proceed of a felony shall be bound to make restitution in an amount equivalent to the extent of such participation (*RPC, Art. 111*).

Thus, B shall be subsidiarily liable in the sum not exceeding P500 which is the gratuitous share in the commission of the crime.

EXTINCTION AND SURVIVAL OF CIVIL LIABILITY

Civil liability shall be extinguished in the same manner as other obligations in accordance with the provisions of the Civil Law:

1. By payment or performance;
2. By the loss of the thing due;
3. By the condonation or remission of debt;
4. By the confusion or merger of the rights of creditor and debtor;
5. By compensation;
6. By novation.

Other causes: annulment, rescission, fulfillment of a resolatory condition, and prescription (*NCC, Art. 1231*).

NOTE: Civil liability is extinguished by subsequent agreement between the accused and the offended party. Express condonation by the offended party has the effect of waiving civil liability with regard to the interest of of the injured party.

Survival of civil liability

The offender shall continue to be obliged to satisfy the civil liability resulting from the crime committed by him, notwithstanding the fact he has served his sentence consisting of deprivation of liberty or other rights, or has not been required to serve the same by reason of amnesty, pardon, commutation of sentence or any other reason (*RPC, Art. 113*).

NOTE: While amnesty wipes out all traces and vestiges of the crime, it does not extinguish civil liability of the offender.

A pardon shall in no case exempt the culprit from the payment of the civil indemnity imposed upon him by the sentence.

Q: Florencio was an appellant of a case for the crime of murder, pending his appeal he died while in confinement and notice of his death was belatedly conveyed to the court. Does his death extinguish his criminal and civil liabilities?

A:Yes. Florencio's death prior to the court's final judgment extinguished his criminal and civil liability ex delicto pursuant to Article 89(1) of the Revised Penal Code. (G.R. No. 177751, January 7,2013)

**BOOK II
(ARTICLES 114-365, RPC)
AND SPECIFICALLY INCLUDED SPECIAL LAWS**

**CRIMES AGAINST NATIONAL SECURITY AND
THE LAW OF NATIONS**

Crimes against National Security

1. Treason (*Art. 114, RPC*);
2. Conspiracy and proposal to commit treason (*Art. 115, RPC*);
3. Misprision of Treason (*Art. 116, RPC*); and
4. Espionage (*Art. 117, RPC*).

Crimes against the Law of Nations

1. Inciting to war and giving motives for reprisal (*Art. 118, RPC*);
2. Violation of Neutrality (*Art. 119, RPC*);
3. Correspondence with hostile country (*Art. 120, RPC*);
4. Flight to enemy country (*Art. 121, RPC*);
5. Piracy and mutiny (*Art. 122, RPC*); and
6. Qualified Piracy and Mutiny (*Art. 123, RPC*).

NOTE: Crimes against National Security and the Law of Nations are exceptions to the principle of territoriality under Art. 2, par. 5 of the RPC (one can be held criminally liable even if those crimes were committed outside the Philippine jurisdiction).

However, the prosecution for the said crimes can proceed only if the offender is already within Philippine territory or brought to the Philippines pursuant to an extradition treaty after the commission of said crimes.

Q: Where can crimes against the law of nations be tried?

A: It may be tried anywhere because they are considered crimes against the family of nations. They are committing crimes against national security.

GR: All crimes against national security can only be committed in times of war.

XPN:

1. Espionage (*Art. 117, RPC*);
2. Inciting to war or giving motives for reprisal (*Art. 118, RPC*);
3. Violation of Neutrality (*Art. 119, RPC*); and
4. Mutiny and piracy (*Art. 122, RPC*) (*Boado, 2008*).

**TREASON
ART. 114**

Treason

Treason is a breach of allegiance to a government, committed by a person who owes allegiance to it.

Allegiance

It is the obligation of *fidelity* and *obedience* which the individuals owe to the government under which they live or to their sovereign, in return for the protection they receive.

2 Kinds:

1. *Permanent* – a citizen's obligation of fidelity and obedience to his government or sovereign; or
2. *Temporary* – allegiance which a foreigner owes to the government or sovereign of the territory wherein he resides, so long as he remains there, in return for the protection he receives, and which consists in the obedience to the laws of the government or sovereign.

Elements

1. That the offender is a Filipino citizen; or an alien residing in the Philippines (*RA 7659*);
2. That there is a war in which the Philippines is *involved*; and
3. That the offender either—
 - a. Levies war against the Government; or
 - b. Adheres to the enemies, giving them aid or comfort.

NOTE: Treason cannot be committed in times of peace because there are no traitors until war has started.

Commission of treason outside the Philippines

- a. If the offender is a *Filipino citizen*, he can commit this crime even if he is outside the Philippines; or
- b. Treason by an *alien* must be committed in the Philippines (*EO 44*) except in case of conspiracy.

Modes of committing treason

1. Levying war against the government; or
2. Adhering to the enemies, giving them aid and comfort.

NOTE: Formal declaration of the existence of a state of war is not necessary.



“Levying war”

This requires the concurrence of two things:

1. That there be an actual assembling of men; and
2. For the purpose of executing a treasonable design by force.

NOTE:The levying of war must be with intent to overthrow the government, not merely to resist a particular statute or to repel a particular officer.

Adherence to enemies

There is adherence to enemies when a citizen intellectually or emotionally favors the enemies and harbors sympathies or convictions disloyal to his country’s policy or interest.

Adherence alone without aid and comfort does not constitute treason, but such adherence may be inferred from the acts committed by a person.

Aid and comfort

It means overt acts which strengthens or tends to strengthen the enemy of the government in the conduct of war against the government or an act which weakens or tends to weaken the power of the government to resist or to attach the enemies of the government.

Specified acts of aid and comfort constituting treason.

1. Serving as informer and active member of the enemy’s military police.
2. Serving in the enemy’s army as agent or spy.

Extent of aid and comfort

The overt act of giving aid or comfort to the enemy must be intentional. As a general rule, to be treasonous, the extent of the aid and comfort given to the enemies must be to render assistance to them as enemies and not merely as individuals and in addition, be directly in furtherance of the enemies’ hostile designs. To make a simple distinction: To lend or give money to an enemy as a friend or out of charity to the beneficiary so that he may buy personal necessities is to assist him as individual and is not technically traitorous. On the other hand, to lend or give him money to enable him to buy arms or ammunition to use in waging war against the giver’s country enhance his strength and by the same count injures the interest of the government of the giver. That is

treason (*People v. Perez, G.R. No. L-856, April 18, 1949*).

Treason cannot be committed through negligence. The overt acts of aid and comfort must be intentional as distinguished from merely negligent or undesignated act (*Cramer v. U.S., 325 U.S. 1; 1945*).

How treason may be proved

1. Testimony of *two witnesses*, at least, to the *same overt act* (*Two-witness rule*); or
2. Confession of the accused *in open court*.

Two-witness rule

It is a rule which requires the testimony of *at least* two witnesses to prove the overt act of giving aid or comfort. The two-witness rule is severely restrictive and requires that each of the witness must testify to the whole overt act; or if it is separable, there must be two witnesses to each part of the overt act (*People v. Escleto, G.R. No. L-1006, June 28, 1949*).

Illustration: Witness A testified that he saw the defendant going to the house of X in search of the latter’s revolver. Witness B testified that when X went to the garrison, the defendant required him (X) to produce his revolver. It was held that the search for the revolver in the house of X is one overt act and the requiring to produce the revolver in the garrison is another. Thus, there must be two witnesses for each act (*People v. Abad, G.R. No. L-430, July 30, 1947*).

Adherence need not be proved by the oaths of two witnesses. Criminal intent and knowledge may be gathered from the testimony of one witness, or from the nature of the act itself, or from circumstances surrounding the act. On the other hand, an overt act, must be established by the deposition of two witnesses. Each of the witnesses must testify to the whole of the overt act; or if it is separable, there must be two witnesses to each part of the overt act (*People v. Adriano, G.R. No. L-477, June 1947*).

Confession

It means confession of guilt in an open court; that is, before the judge while actually hearing the case.

Extrajudicial confession or confession made before the investigators is not sufficient to convict a person of treason.

Q: X furnished women to the enemy. Does the act constitute treason?

A: Commandeering of women to satisfy the lust of the enemies or to enliven the entertainment held in their honor was NOT treason even though the women and the entertainments helped to make life more pleasant for the enemies (*People v. Perez*, G.R. No. L-856, April 18, 1949).

Accepting a public office under the enemy does not constitute the felony of treason

Mere acceptance of a public office and the discharge of the duties connected therewith do not constitute per se the crime of treason, unless such office was accepted as an aid and for the comfort of the enemy and that the person who accepted the office adheres to the enemy.

Treason as a continuing offense

It can be committed by a single act or by series of acts. It can be committed in one single or different time. In treason, there is only one criminal intent. A person who commits treason is not criminally responsible for as many crimes of treason as the overt acts as he has intentionally committed to give aid to the enemy.

NOTE: The offender can still be prosecuted even after war.

Common crimes (e.g. murder, robbery, arson) committed in the furtherance of the crime of treason cannot be considered crimes separate from treason

The common crimes committed in furtherance of treason are the overt acts of aid and comfort in favor of the enemy and are therefore inseparable from treason itself. They become an element of treason.

However, if the prosecution should elect to prosecute the culprit specifically for these crimes, instead of relying on them as an element of treason, punishment for these common crimes is not precluded (*People v. Prieto*, G.R. No. L-399, January 29, 1948).

Aggravating circumstances in the crime of treason

1. Cruelty;
2. Ignominy; and
3. Rape, wanton robbery of personal gains and brutality with which the killing or physical injuries

are carried out which can be regarded as cruelty and ignominy.

NOTE: Evident premeditation, superior strength, and treachery are circumstances inherent in treason, and therefore, not aggravating.

Q: A was charged with the crime of treason. In his defense, he asserts that he can no longer be prosecuted for treason since he already lost his Filipino citizenship under paragraphs 3, 4, and 6 of the Commonwealth Act No. 63, which provides that "...a Filipino may lose his citizenship by accepting commission in the military, naval, or air service of a foreign country..." when he joined the Japanese armed forces. Is his defense tenable?

A: NO. A cannot divest himself of his Philippine citizenship by the simple expedient of accepting a commission in the military, naval, or air service of such country. If such contention would be sustained, the very crime would be the shield that would protect him from punishment (*People v. Manayao*, G.R. No. L-322, July 28, 1947).

Suspended allegiance or change of sovereignty cannot be used as a defense to the crime of treason because of the following reasons

1. A citizen owes an absolute and permanent allegiance to his government;
2. The sovereignty of the Government is not transferred to the enemy by mere occupation;
3. The subsistence of the sovereignty of the legitimate Government in a territory occupied by the military forces of the enemy during the war is one of the rules of International Law; and
4. What is suspended is merely the exercise of the rights of sovereignty (*Laurel v. Misa*, *ibid.*).

NOTE: The defense of duress or uncontrollable fear, and lawful obedience to a de facto Government are good defenses in treason (*Go Kim Cham v. Valdez*, G.R. No. L-5, September 17, 1945; *People v. Bagwis*, G.R. No. L-262, March 29, 1947).

**CONSPIRACY AND PROPOSAL TO COMMIT
TREASON
ART. 115****Conspiracy to commit treason**

Conspiracy to commit treason is committed when *in times of war*, two or more persons come to an *agreement* to levy war against the government or to adhere to the enemies and to give them aid or comfort, and decide to commit it.



Proposal to commit treason

Proposal to commit treason is committed when *in times of war*, two or more persons has *decided* to levy war against the government or to adhere to the enemies and to give them air or comfort, *proposes* its execution to some other person or persons.

Elements of *conspiracy* to commit treason

1. The Philippines is at war;
2. Two or more persons come to an agreement to:
 - a. Levy war against the government, or
 - b. Adhere to enemies and to give them aid or comfort; and
3. They decide to commit it.

Elements of *proposal* to commit treason

1. The Philippines is at war
2. A person who has decided to levy war against the government, or to adhere to the enemies and give them aid and comfort; and
3. Proposes its execution to some other person or persons.

The mere conspiracy and proposal to commit treason are punishable as felonies under Article 115 because in treason, the very existence of the State is endangered.

Two-witness rule does not apply to conspiracy and proposal to commit treason

It is because conspiracy and proposal to commit treason is separate and distinct offense from that of treason (*US v. Bautista, G.R. No. 2189, November 3, 1906*).

Crime committed if actual acts of treason are committed after the conspiracy or after the proposal is accepted

The crime of treason is already consummated since the perpetrator had already executed what was agreed upon or what was proposed to be done. The conspiracy or proposal is then considered merely as means in the commission thereof.

**MISPRISION OF TREASON
ART. 116**

Elements (BAR 2010)

1. That the offender who is not a foreigner must be owing allegiance to the Government;
2. That he has knowledge of any conspiracy to commit treason against the Government; and
3. That he conceals or does not disclose or make known the same as soon as possible to the Governor or Fiscal of the province or Mayor or Fiscal of the city in which he resides.

This crime is an *exception* to the rule that mere silence does not make a person criminally liable. It is a crime of omission.

NOTE: ART. 116 does not apply when the crime of treason is already committed by someone and the accused does not report its commission to the proper authority.

Misprision of treason cannot be committed by a resident alien

The offender must be owing allegiance to the Government, without being a foreigner.

Penalty (BAR 2010)

Art. 116 does not provide for a penalty, but the offender is punished as an accessory to the crime of treason. Therefore, the penalty is two degrees lower than that provided for treason.

NOTE: The offender in Art. 116 is considered a principal in the crime of misprision of treason, not as an accessory to the crime of treason. The term *accessory* refers only to the *penalty* to be imposed, not to the person who acted subsequent to the commission of the offense.

Q: X, a Filipino citizen, has knowledge of treason committed by someone and does not report its commission to the proper authorities. Can he be held liable for Misprision of Treason?

A: NO. Art. 116 does not apply when the crime of treason is already committed. This is so because Art. 116 speaks of “knowledge of any *conspiracy against*” the Government of the Philippines, not knowledge of treason actually committed by another.

**ESPIONAGE
ART. 117**

Espionage is the offense of gathering, transmitting, or losing information respecting the national defense with intent or reason to believe that the

information is to be used to the injury of the Republic of the Philippines or to the advantage of any foreign nation.

NOTE: Espionage can be committed in times of war and peace.

Ways of committing espionage under Art. 117 and their respective elements

1. By **entering**, without authority therefor, a warship, fort, or naval or military establishment or reservation to obtain any information, plans, photographs, or other data of a confidential nature relative to the defense of the Philippines.

Elements:

- a. That the offender enters in any place mentioned therein;

NOTE: The offender is any person, whether a citizen or a foreigner, a private individual or a public officer.

- b. That he has no authority therefor; and
- c. That his purpose is to obtain information, plans, photographs, or other data of confidential nature relative to the defense of the Philippines.

NOTE: The offender must have the *intention* to obtain information relative to the defense of the Philippines, but it is not necessary to have actually obtained such information.

2. By **disclosing** to the representative of a foreign nation the contents of the articles, data or information referred to in the preceding paragraph, which he had in his possession by reason of the public office he holds.

Elements:

- a. That the offender is a public officer;
- b. That he has in his possession the articles, data, or information referred to in paragraph no. 1 of Article 117, by reason of the public office he holds; and
- c. That he discloses their contents to a representative of a foreign nation.

Offenders under Art. 117

1. *Par. 1* – the offender is any person, whether a citizen or foreign individual or a public officer
2. *Par. 2* – the offender is a public officer, who has in his possession, articles, data, or

information by reason of the public office he holds.

NOTE: When the offender is a public officer or employee, the penalty next higher in degree shall be imposed.

Other acts of espionage which are punishable under CA 616 (An Act to Punish Espionage and Other Offenses against National Security)

1. Unlawfully obtaining or permitting to be obtained information affecting national defense;
2. Unlawful disclosing of information affecting national defense;
3. Disloyal acts or words in time of peace;
4. Disloyal acts or words in time of war;
5. Conspiracy to violate preceding acts;
6. Harboring or concealing violators of law; and
7. Photographing from aircraft of vital military information.

Espionage vis-à-vis treason

BASIS	ESPIONAGE	TREASON
<i>As to the citizenship of the offender</i>	It is a crime not conditioned by citizenship of the offender.	With the amendment, under Art. 114, treason may be committed by a Filipino citizen or an alien residing in the Philippines.
<i>As to the time it may be committed</i>	It may be committed either in times of war or in time of peace.	It is committed only in times of war.
<i>As to the manner of committing the crime</i>	It may be committed in different ways.	There are only two modes of committing treason as provided under Article 114.

**INCITING TO WAR OR GIVING
MOTIVES FOR REPRISALS
ART. 118**

Elements

1. That the offender performs unlawful or unauthorized acts; and



2. That such acts provoke or give occasion for a war involving or liable to involve the Philippines or expose Filipino citizens to reprisals on their persons or property.

If both elements concur, the crime is committed regardless of his intentions.

Time of commission

The crime of inciting to war or giving motives for reprisals is committed in times of peace.

NOTE: If the offender is a private individual, the penalty is *prision mayor*. If the offender is a public officer or employee, the penalty is *reclusion temporal*.

Reprisal

It is any kind of forcible or coercive measure whereby one State seeks to exercise a deterrent effect or to obtain redress or satisfaction, directly or indirectly, for consequences of the illegal acts of another State which has refused to make amends for such illegal conduct.

Reprisal is resorted to for the purpose of settling a dispute or redressing a grievance without going to war.

Extent of reprisals

Reprisals are not limited to military action. It could be economic reprisals or denial of entry into their country. *E.g.* X burns a Singaporean flag. If Singapore bans the entry of Filipinos, that is reprisal.

Q: From 1658 to 2012, the inhabitants of Sabah Malaysia were paying rents to the Sultanate of Sulu. On 2013, Sultan J, of the Sultanate of Sulu decided to send its royal forces in order to claim ownership over Sabah on the basis of a document ceding ownership of Sabah from Brunei in favor of Sulu. Since Sabah is already part of the territory of Malaysia and claiming that the act of Sultan J violates Art. 118 of the RPC, the Philippine government sued Sultan J. Will the suit prosper?

A: NO. Art. 118 is applicable only when the offender performs unlawful or unauthorized acts. Sultan J was merely asserting his right to own the territory of Sabah when he sent its royal forces. The cession made by Brunei in favor of the

Sultanate of Sulu is a lawful and authorized basis upon which the claim of Sultan J may be made.

**VIOLATION OF NEUTRALITY
ART. 119**

Neutrality

Neutrality is a condition of a nation that, in times of war, takes no part in the dispute but continues peaceful dealings with the belligerents.

Elements

1. That there is a war in which the Philippines is not involved;
2. That there is a regulation issued by a competent authority for the purpose of enforcing neutrality; and
3. That the offender violates such regulation.

Authority to issue a regulation for the enforcement of neutrality

The regulation must be issued by competent authority like the President of the Philippines or the Chief of Staff of the Armed Forces of the Philippines, during a war between different countries in which the Philippines is not taking sides.

**CORRESPONDENCE WITH HOSTILE COUNTRY
ART. 120**

Correspondence

Correspondence is communication by means of letters; or it may refer to the letters which pass between those who have friendly or business relation.

Elements

1. There is a war in which the Philippines is involved;
2. That the offender makes correspondence with an enemy country or territory occupied by enemy troops; and
3. That the correspondence is either —
 - a. Prohibited by the government, or
 - b. Carried on in ciphers or conventional signs, or
 - c. Containing notice or information which might be useful to the enemy.

NOTE: Even if the correspondence contains innocent matters, but the correspondence has been prohibited by the Government, it is still

punishable. However, in paragraphs 2 and 3 of Art. 120, prohibition by the Government is not essential.

Ciphers

It means secret message or code.

Circumstances qualifying the offense under Art. 120

Two things must concur to qualify the offense:

1. That the notice or information might be *useful* to the enemy; and
2. That the offender *intended* to aid the enemy.

NOTE: If the offender intended to aid the enemy by giving such notice or information, the crime amounts to treason; hence, the penalty is the same as that for treason.

FLIGHT TO ENEMY COUNTRY ART. 121

Elements

1. That there is a war in which the Philippines is involved;
2. That the offender must be owing allegiance to the Government;
3. That the offender attempts to flee or go to enemy country; and
4. That going to enemy country is prohibited by competent authority.

NOTE: It should be noted that the mere attempt to flee or go to enemy country when prohibited by competent authority consummates the felony.

Persons liable

Alien residents, not only Filipino citizens, can be held liable under this article. That law does not say "not being a foreigner." Hence, allegiance herein may be permanent or temporary.

PIRACY IN GENERAL AND MUTINY IN THE HIGH SEAS OR IN PHILIPPINE WATERS ART. 122

Piracy

It is robbery or forcible depredation on the high seas, without lawful authority and done with *animo furandi* (*intent to steal*) and in the spirit and intention of universal hostility.

Modes of committing piracy (Art. 122)

1. By attacking or seizing a vessel on the high seas; or
2. By seizing the vessel while on the high seas or the whole or part of its cargo, its equipment or personal belongings of its complement or passengers, by non-passengers or non-members of the crew.

Elements (BAR 2006)

1. That a vessel is on the high seas or in the Philippine waters;
2. That the offenders are not members of its complement or passengers of the vessel; and
3. That the offenders either —
 - a. Attack or seize that vessel, or
 - b. Seize the whole or part of the cargo of said vessel, its equipment or personal belongings of its complement or passengers.

High seas

It means any waters on the sea coast which are without the boundaries of the low-water mark, although such waters may be in the jurisdictional limits of a foreign government. The Convention on the Law of the Sea defines "high seas" as parts of the seas that are *not* included in the exclusive economic zone, in the territorial seas, or in the internal waters of a State, or in the archipelagic waters of an archipelagic State.

"High seas" does not mean that the crime is committed beyond the three-mile limit of any State.

Court which has jurisdiction over piracy committed in the high seas

Pirates are in law *hostes humani generis*. Piracy is a crime not against any particular state but against all mankind. It may be punished in the competent tribunal of any country where the offender may be found or into which he may be carried. The jurisdiction of piracy unlike all other crimes has no territorial limits. As it is against all so may it be punished by all. Nor does it matter that the crime was committed within the jurisdictional 3-mile limit of a foreign state, "for those limits, though neutral to war, are not neutral to crimes" (*People v. Lo-lo and Saraw*, G.R. No. 17958, February 27, 1922).

Q: If piracy was committed outside the Philippine waters, will the Philippine courts have jurisdiction over the offense?

A: YES, for piracy falls under Title I Book 2 of the Revised Penal Code. As such, it is an exception to the rule on territoriality in criminal law under Article 2. The same principle applies even if the offenders were charged, not with a violation of qualified piracy under the Code but under a special law, PD 532 which penalizes piracy in Philippine waters (*People v. Catantan, G.R. No. 118075, September 5, 1997*).

PIRACY UNDER THE RPC	PIRACY UNDER PD 532
Can be committed while the vessel is on high seas or in Philippine waters.	Can be committed only when the vessel is in Philippine waters.
Can only be committed by persons who are not members of the vessel's complement, or the passengers of the vessel.	Can be committed by any persons, including the vessel's complement, or the passengers of the vessel.

NOTE: There is, thus, no piracy when members of the vessel's complement or its passengers attack or seize the vessel or its cargo on high seas. The offense would then be theft or robbery cognizable by Philippine courts, if the crime is committed on a Philippine ship, pursuant to par. 1, Art. 2 of the RPC.

Mutiny

It is the unlawful resistance to a superior officer, or the raising of commotions and disturbances on board a ship against the authority of its commander.

Piracy vis-à-vis mutiny

PIRACY	MUTINY
Offenders are strangers to the vessel. Hence, offenders are neither passengers nor crew members.	Offenders are members of the complement or the passengers of the vessel.
Done with <i>animo furandi/intent to</i>	Against the authority of the commander of

steal and with the intention of universal hostility.	the ship.
Intent to gain is an element of piracy.	The offenders only intend to ignore the ship's officers. Intent to gain is immaterial.
Attack from the outside.	Attack from the inside.

QUALIFIED PIRACY ART. 123

Circumstances qualifying the crimes of piracy and mutiny (BAR 2006)

1. Whenever they have seized a vessel by boarding or firing upon the same;

NOTE: The first qualifying circumstance does not apply to mutiny since the offenders are already on board the ship.

2. Whenever the pirates have abandoned their victims without means of saving themselves; or **(BAR 2008)**
3. Whenever the crime is accompanied by murder, homicide, physical injuries, or rape.

No complex crime of piracy with murder

There is only one crime committed – qualified piracy. Murder, rape, homicide, physical injuries are mere circumstances qualifying piracy and cannot be punished as separate crimes, nor can they be complexed with piracy. Qualified piracy is considered a special complex crime. It is punishable by *reclusion perpetua* to death regardless of the number of victims.

**CRIMES AGAINST THE FUNDAMENTAL
LAWS OF THE STATE**

Crimes against the fundamental laws of the State

1. Arbitrary detention (*Art. 124, RPC*);
2. Delay in the delivery of detained persons to the proper judicial authorities (*Art. 125, RPC*);
3. Delaying release (*Art. 126, RPC*);
4. Expulsion (*Art. 127, RPC*);
5. Violation of domicile (*Art. 128, RPC*);
6. Search warrants maliciously obtained and abuse in the service of those legally obtained (*Art. 129, RPC*);
7. Searching domicile without witnesses (*Art. 130, RPC*);
8. Prohibition, interruption, and dissolution of peaceful meetings (*Art. 131, RPC*);
9. Interruption of religious worship (*Art. 132, RPC*); and
10. Offending the religious feelings (*Art. 133, RPC*).

GR: Offenders under this title are public officers or employees.

XPN:

1. Under Art. 133, offending the religious feelings, the offender maybe any person.
2. When a private person conspire with a public officer or acts as accomplice or accessory in the commission of the crime.

They are called crimes against “the fundamental laws of the State” because they violate certain provisions of the Bill of Rights under the 1987 Philippine Constitution.

Constitutional bases of the crimes under this title

RPC	CONSTITUTION
1. Art. 124 (Arbitrary Detention); Art. 125 (Delay in the Delivery of Detained Persons); Art. 126 (Delaying Release)	Sec. 1 of Article III (Bill of Rights) “No person shall be deprived of xxx liberty xxx without due process of law xxx.”
2. Art. 127 (Expulsion)	Sec. 6 “The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired.”

3. Art. 128 (Violation of Domicile); Art. 129 (Search Warrants Maliciously Obtained and Abuse in the Service of those Legally Obtained); Art. 130 (Searching Domicile Without Witnesses)	Sec. 2 “The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizure xxx shall be inviolable.”
4. Art. 131 (Prohibition, Interruption and Dissolution of Peaceful Meetings)	Sec. 4 “No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people to peaceably assemble and petition the Government for redress of grievances xxx.”
5. Art. 132 (Interruption of Religious Worship); Art. 133 Offending Religious Feelings)	Sec. 5 “No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship without discrimination or preference shall forever be allowed.

Classes of arbitrary detention (BAR 2006)

1. Detaining a person without legal ground (*Art. 124, RPC*);
2. Delay in the delivery of detained persons to the proper authorities (*Art. 125, RPC*); and
3. Delaying release (*Art. 126, RPC*).

NOTE: Arts. 125 and 126 make reference to the penalties provided for in Art. 124 for their penalties.

**ARBITRARY DETENTION
ART. 124**

Elements (BAR 1992)

1. Offender is a public officer or employee vested with the authority and jurisdiction to effect arrest and detain a person;
2. He detains a person; and
3. Detention is without legal grounds (*US v. Braganza, G.R. No. 3971, February 3, 1908*).



What is Detention?

Detention is defined as the actual confinement of a person in an enclosure, or in any manner detaining and depriving him of his liberty.

Periods of detention and punishment

1. Detention for 3 days or less — punishable by *arresto mayor* in its maximum to *prision correccional* in its minimum
2. Detention for more than 3 to 15 days— punishable by *prision correccional* in its medium and maximum
3. Detention for more than 15 to 6 months — punishable by *prision mayor*
4. Detention for more than 6 months— punishable by *reclusion temporal*

Arbitrary detention even if the victims were not kept in an enclosure

There is arbitrary detention even if the victims were not kept in an enclosure. The prevailing jurisprudence on kidnapping and illegal detention is that the curtailment of the victim's liberty need not involve any physical restraint upon the victim's person. If the acts and actuations of the accused can produce such fear in the mind of the victim sufficient to paralyze the latter, to the extent that the victim is compelled to limit his own actions and movements in accordance with the wishes of the accused, then the victim is, for all intent and purposes, detained against his will (*Astorga v. People, G.R. No. 154130, October 1, 2003*).

Q: Is it necessary that a public officer be a public officer to be held liable for arbitrary detention?

A: NO. It is important, however, that the public officer must be vested with the authority to detain or order the detention of persons accused of a crime such as policemen and other agents of law, judges or mayors.

Effect if the public officer has no authority to detain a person

If the offender does not have the authority to detain a person or to make such arrest, the crime committed by him is illegal detention. A public officer who is acting outside the scope of his official duties is no better than a private citizen.

NOTE: In arbitrary detention, the offender is a public officer whose functions have something to do with the protection of life and/or property and maintenance of peace and order. Thus, if the person, who arrests another without legal ground, is without authority to do so, like a clerk in the Office of the Central Bank Governor, arbitrary detention is not the proper charge but illegal detention.

A *barangay* chairman can be guilty of arbitrary detention

He has authority, in order to maintain peace and order, to cause the arrest and detention of a person (*Boado, 2008*).

Legal grounds for the detention of persons (BAR 2006)

GR:

1. Commission of a crime;
 - a. arrest with a warrant
 - b. warrantless arrest

Instances of a valid warrantless arrest under Rule 113, Sec. 5 of the Revised Rules of Court

 - a. Suspect is caught in flagrante delicto
 - b. Suspect is caught immediately after the commission of the offense when the officer has probable cause to believe based on personal knowledge of facts and circumstances that the person to be arrested committed it.
 - c. Escaping prisoners
2. Violent insanity or other ailment requiring compulsory confinement of the patient in a hospital; and

XPN: When the peace officers acted in good faith even if the grounds mentioned above are not obtaining, there is no arbitrary detention.

Illustration: 2 BIR secret agents, strangers in the municipality who were spying the neighborhood of the market place and acting generally in a manner calculated to arouse the suspicion of any one not advised as to their duty, were arrested by policemen of the town. The Supreme Court held that the police officers acted in good faith and cannot be held liable for arbitrary detention (*U.S. v. Batalliones, G.R. No. 7284, August 23, 1912*).

NOTE: RA 7438 mandates the duties of arresting officer under pain of penalty (imprisonment of 8 years to 10 years or fine of Php 6, 000 or both) in case of failure to comply.

Arbitrary detention can be committed thru imprudence

Illustration: A police officer re-arrests a woman who had been released by means of verbal order of the judge. The police officer acted without malice, but did not verify the order of release before proceeding to make the re-arrest. He is liable for arbitrary detention through simple imprudence (*People v. Misa, 36 O.G. 3496*).

Arbitrary detention vis-à-vis Illegal detention

BASIS	ARBITRARY DETENTION	ILLEGAL DETENTION
<i>As to the principal's capacity</i>	The principal offender must be a public officer.	The principal offender is a private person.
<i>As to his duty to detain a person</i>	The offender who is a public officer has a duty which carries with it the authority to detain a person.	The offender, even if he is a public officer, does not include as his function the power to arrest and detain a person.

Arbitrary detention vis-à-vis Unlawful arrest

BASIS	ARBITRARY DETENTION	UNLAWFUL ARREST
<i>As to the capacity of the offender</i>	The offender is a public officer possessed with authority to make arrests.	The offender may be any person.
<i>As to the purpose of detention</i>	The purpose for detaining the offended party is to deny him of his liberty.	The purpose is to accuse the offended party of a crime he did not commit, to deliver the person to the proper authority, and to file the

		necessary charges in a way trying to incriminate him.
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Q: X, a police officer, falsely imputes a crime against A to be able to arrest him but he appears to be not determined to file a charge against him. What crime, if any, did X commit?

A: The crime is arbitrary detention through unlawful arrest (*Boado, 2008*).

**DELAY IN THE DELIVERY OF DETAINED PERSONS TO THE PROPER JUDICIAL AUTHORITY
ART. 125**

Elements (BAR 1990)

- Offender is a public officer or employee;
- He has detained a person for some legal ground; and
- He fails to deliver such person to the proper judicial authorities within:
 - 12 hours for crimes/offenses punishable by light penalties or their equivalent;
 - 18 hours for crimes/offenses punishable by correctional penalties or their equivalent;
 - 36 hours for crimes/offenses punishable by afflictive penalties or their equivalent.

NOTE: The phrase "or their equivalent" means that it is applicable even in violation of special laws

Circumstances considered in determining liability of officer detaining a person beyond the legal period

- The means of communication;
- The hour of arrest; and
- Other circumstances such as the time of surrender and material possibility of the fiscal to make the investigation and file in time the necessary information.

DELAY IN THE DELIVERY OF DETAINED PERSONS

ARBITRARY DETENTION



The detention is legal at the outset but becomes arbitrary when the detention exceeds any of the periods of time specified in Art. 125, without the person detained having been charged before the proper judicial authority.	The detention is illegal at the very inception because of the absence of lawful cause for such arrest.
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Situation contemplated by Art. 125

Art. 125 contemplates a situation where arrest was made without a warrant but there exists a legal ground for the arrest. It does not apply when the arrest is on the strength of a warrant of arrest, because in the latter case, there is no period required for the delivery of a detained person to the proper judicial authorities except that it must be made within a reasonable time. The person arrested can be detained indefinitely until his case is decided by the court or until he posts bail for his temporary release.

Warrantless arrest is lawfully effected when

1. ***In Flagrante Delicto*** - When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense
2. ***Hot Pursuit*** - When an offense has in fact been committed, and he has probable cause to believe based on personal knowledge of facts and circumstances that the person to be arrested has committed it

Probable cause — such facts and circumstances which could lead a reasonable discreet and prudent man to believe that an offense has been committed and that the object sought in connection with the offense are in the place sought to be searched

Personal knowledge of facts — must be based upon probable cause, which means an actual belief or reasonable grounds of suspicion

3. ***Escaping Prisoner*** - When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another

Delivery (BAR 1990)

It means the filing of correct information or complaint with the proper judicial authorities. It does not mean physical delivery or turnover of arrested person to the court.

Proper judicial authorities

It refers to the courts of justice or judges of said courts vested with judicial power to order the temporary detention or confinement of a person charged with having committed a public offense.

Duty of the officer if the judge is not available

Where a judge is not available, the arresting officer is duty-bound to release a detained person, if the maximum hours for detention had already expired. Failure to cause the release may result in an offense under Art. 125 (*Albor v. Auguis, A.M. No. P-01-1472, June 26, 2003*).

Person arrested without a warrant who opts to avail his right to preliminary investigation

Under the Revised Rules of Court, he should waive in writing his rights under Art. 125. The waiver must be under oath and with the assistance of counsel.

Rights of the person detained

1. He shall be informed of the cause of his detention; and
2. He shall be allowed, upon his request to communicate and confer at anytime with his attorney or counsel.

NOTE: The illegality of detention is not cured by the filing of the information in court.

Length of waiver

1. *Light offense* – 5 days
2. *Serious and less serious offenses* – 7 to 10 days

If the person arrested does not want to waive his rights under Art. 125

The arresting officer will have to comply with Art. 125 and file the case immediately in court without preliminary investigation.

DELAYING RELEASE ART. 126

Punishable acts under Art. 126

1. Delaying the performance of judicial or executive order for the release of a prisoner;
2. Unduly delaying the service of the notice of such order to said prisoner; and
3. Unduly delaying the proceedings upon any petition for the liberation of such person.

Elements

1. Offender is a public officer or employee;
2. There is a judicial or executive order for the release of the prisoner or detention prisoner, or that there is a proceeding upon a petition for the liberation of such person; and

The prisoners could be prisoners by final judgment or detention prisoners.

3. Offender without good reason delays:
 - a. Service of notice of such order to the prisoner, or
 - b. Performance of such judicial or executive order for the release of the prisoner, or
 - c. Proceedings upon a petition for the release of such person.

NOTE: Wardens and jailers are the public officers most likely to violate this article.

**EXPULSION
ART. 127****Punishable acts under this article**

1. Expelling a person from the Philippines; and
2. Compelling a person to change his residence.

This article does not apply in cases of ejectment, expropriation or when the penalty imposed is *destierro*.

Illustration: In *Villavicencio v. Lukban*, the mayor of the City of Manila wanted to make the city free from prostitution. He ordered certain prostitutes to be transferred to Davao, without observing due processes since they have not been charged with any crime at all. It was held that the crime committed was expulsion.

Only the court by final judgment can order a person to change his residence. This is illustrated in ejectment proceedings, expropriation proceedings, and in the penalty of *destierro* (Reyes, 2012).

Elements

1. Offender is a public officer or employee;
2. He either:
 - a. Expels any person from the Philippines
 - b. Compels a person to change residence; and
3. Offender is not authorized to do so by law.

Essence of the crime of expulsion

It is coercion but it is specifically termed expulsion when committed by a public officer.

Grave coercion

A private person who committed any of the punishable acts under Art. 127 is responsible for the crime of grave coercion.

Expulsion

The crime of expulsion is committed if aliens are deported without an order from the President or the Commissioner of Immigration and Deportation after due proceedings.

NOTE: Pursuant to Sec. 69 of the Revised Administrative Code, only the President of the Philippines is vested with authority to deport aliens.

The crime of expulsion is also committed when a Filipino who, after voluntarily leaving the country, is illegally refused re-entry by a public officer because he is considered a victim of being forced to change his address.

**VIOLATION OF DOMICILE
ART. 128****Punishable acts under this article (BAR 2002,2009)**

1. Entering any dwelling against the will of the owner thereof;
2. Searching papers or other effects found therein without the previous consent of such owner; and
3. Refusing to leave the premises after having surreptitiously entered said dwelling and after having been required to leave the same.

NOTE: What is punished is the refusal to leave, the entry having been made surreptitiously.

“Against the will of the owner”

It presupposes opposition or prohibition by the owner, whether express or implied, and not merely the absence of consent.

NOTE: When one voluntarily admits to a search or consents to have it made upon his person or premises, he is precluded from later complaining thereof. The right to be secure from unreasonable searches may, like every right, be waived and such waiver may be either expressly or impliedly.

Common elements

1. Offender is public officer or employee; and
2. He is not authorized by judicial order to enter the dwelling and/or to make a search for papers and for other effects.

Trespass to dwelling

The crime committed is trespass to dwelling when the punishable acts under Art. 128 are committed by a private person.

Applicability of provisions under Art. 128 if the occupant of the premises is not the owner

It would be sufficient if the inhabitant is lawful occupant using the premises as his dwelling, although he is not the property owner.

Art. 128, when not applicable

If a public officer, not armed with a search warrant or a warrant of arrest, searches a person outside his dwelling, the crime committed is grave coercion, if violence and intimidation are used (*Art. 286*), or unjust vexation, if there is no violence or intimidation (*Art. 287*).

Qualifying circumstances under Art. 128

1. If committed at night time; and
2. If any papers or effects not constituting evidence of a crime are not returned immediately after the search is made by the offender.

**SEARCH WARRANTS MALICIOUSLY OBTAINED
AND ABUSE IN THE SERVICE OF THOSE
LEGALLY OBTAINED
ART. 129**

Punishable acts under this article

1. Procuring a search warrant without just cause.

Elements:

- a. That the offender is a public officer or employee;
 - b. That he procures a search warrant; and
 - c. That there is no just cause.
2. Exceeding his authority or by using unnecessary severity in executing a search warrant legally procured

Elements:

- a. That the offender is a public officer or employee;
- b. That he has legally procured a search warrant; and
- c. That he exceeds his authority or uses unnecessary severity in executing the same.

Search warrant

It is an order in writing, issued in the name of the People of the Philippines, signed by a judge and directed to a peace officer, commanding him to search for personal property described therein and bring it before the court.

Personal property to be seized

1. Subject of the offense;
2. Stolen or embezzled and the other proceeds or fruits of the offense; or
3. Used or intended to be used as the means of committing an offense [Sec. 3, Rule 126, Revised Rules of Criminal Procedure (Reyes, 2017)].

Requisite for the issuance of search warrant

A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines (*Sec. 4, Rule 126, Revised Rules of Criminal Procedure*).

NOTE: A search warrant shall be valid for 10 days from its date. Thereafter, it shall be void.

Search warrant illegally obtained

Search warrant is considered illegally obtained when it was procured without a probable cause.

Probable cause

Probable cause for a search is defined as such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the object sought in connection with the offense are in place sought to be searched (*Burgos v. Chief of Staff*, G.R. No. L-64261, December 26, 1984).

Test for lack of just cause

Whether the affidavit filed in support of the application for search warrant has been drawn in such a manner that *perjury* could be charged thereon and the affiant could be held liable for damages caused (*Alvarez v. Court, et al* 64 Phil 33).

Consequence of evidence obtained, using a search warrant that was issued without just cause

When papers and effects are obtained during unreasonable searches and seizures, or under a search warrant issued without probable cause, or in violation of the privacy of communications and correspondence, the papers or effects obtained are not admissible for any purpose in any proceeding (*Sec. 2 and 3, Art. III, 1987 Constitution*).

Effect if the search warrant is secured through a false affidavit

The crimes committed are separate crimes of perjury and violation of Art. 128. The liability of the offender under Art. 129 shall be in addition to his liability for the commission of any other offense.

Elements of exceeding authority or using unnecessary severity in executing a search warrant legally procured:

1. That the offender is a public officer or employee.
2. That he has legally procured a search warrant.
3. That he exceeds authority or uses unnecessary severity in executing the same.

**SEARCHING DOMICILE WITHOUT WITNESSES
ART. 130**

Elements

1. Offender is a public officer or employee;

2. He is armed with search warrant legally procured;
3. He searches the domicile, papers or other belongings of any person; and

NOTE: The papers or other belongings must be in the dwelling of the owner at the time the search is made.

4. Owner or any member of his family, or two witnesses residing in the same locality are not present.

NOTE: Article 130 does not apply to searches of vehicles or other means of transportation, because the searches are not made in the dwelling.

5. Owner or any member of his family, or two witnesses residing in the same locality are not present.

This article does not apply to searches of vehicles and other means of transportation (*Reyes, 2008*).

The witnesses during the search should be in the following order:

1. Homeowner
2. Members of the family of sufficient age and discretion
3. Responsible members of the community

Unlike in Art.128 where the public officer is not armed with a warrant, in crimes under Art. 129 and 130, the search is made by virtue of a valid warrant, but the warrant notwithstanding, the liability for the crime is still incurred through the following situations:

1. The search warrant was irregularly obtained
2. The officer exceeded his authority under the warrant
3. The public officer employs unnecessary or excessive severity in the implementation of the search warrant
4. The owner of dwelling or any member of the family was absent, or two witnesses residing within the same locality were not present during the search.

Q: Suppose, X, a suspected pusher lives in a condominium unit. Agents of the PDEA obtained a search warrant but the name of the person in the search warrant did not tally with the address indicated therein. Eventually, X was found but in a different address. X resisted but the agents insisted on the search. Drugs

were found and seized and X was prosecuted and convicted by the trial court. Is the search valid?

A: NO, because the public officers are required to follow the search warrant by its letter. They have no discretion on the matter. Their remedy is to ask the judge to change the address indicated in the search warrant.

**PROHIBITION, INTERRUPTION AND DISSOLUTION OF PEACEFUL MEETINGS
ART. 131**

Punishable acts under this article

1. Prohibiting or interrupting, without legal ground, the holding of a peaceful meeting, or by dissolving the same;
2. Hindering any person from joining any lawful association or from attending any of its meetings; and
3. Prohibiting or hindering any person from addressing, either alone or together with others, any petition to the authorities for correction of abuses or redress of grievances.

In all three cases, the following **elements** must concur:

1. Offender is a public officer; and
2. He performs any of the acts mentioned above

Necessity that the offender be a stranger to the meeting that has been interrupted and dissolved

To be held liable under Art. 131, it is necessary that the offender be a stranger to the meeting that has been interrupted and dissolved. If the offender is a participant of the meeting, he is liable for unjust vexation.

Only a public officer or employee can commit this crime.

If the offender is a private individual, the crime is disturbance of public order defined in Article 153.

Requiring a permit before any meeting or assembly cannot be construed as preventing peaceful assemblies

The permit requirement shall be in exercise only of the government's regulatory powers and not really to prevent peaceful assemblies. This requirement is legal as long as it is not being exercised as a prohibitory power.

NOTE: But if such application for permit is arbitrarily denied, or conditions which defeat the exercise of the right to peaceably assemble is dictated by the officer, this article applies.

Prohibition, Interruption, or Dissolution of Peaceful Meetings under Art.131 vis-à-vis Tumults and other Disturbances, under Art. 153

ART. 131	ART. 153
The public officer is not a participant. As far as the gathering is concerned, the public officer is a third party.	The public officer is a participant of the assembly.
The offender must be a public officer.	The offender could be a private person, whether a participant of the assembly or not.

**INTERRUPTION OF RELIGIOUS WORSHIP
ART. 132**

Elements

1. Offender is a public officer or employee;
2. Religious ceremonies, or manifestations of any religious ceremonies are about to take place or are going on; and
3. Offender prevents or disturbs the same,

If the offender is a *private individual*, he may be liable under Art. 133.

Religious worship includes people in the act of performing *religious rites for religious ceremony* or manifestation of religion. If the prohibition or disturbance is committed only in a meeting or rally of a sect, it would be punishable under Art. 131.

Qualifying circumstances of the crime

If the crime is committed with violence or threats

Rationale for punishing the interruption of religious worship

Persons who meet for the purpose of religious worship, by any method which is not indecent and unlawful, have a right to do so without being molested or disturbed (*U.S. v. Balcorta, 25 Phil 279*).

**OFFENDING THE RELIGIOUS FEELINGS
ART. 133**

Elements

1. Acts complained of were performed:
 - a. In a place devoted to religious worship; or
 - b. During the celebration of any religious ceremony; and
2. Acts must be notoriously offensive to the feelings of the faithful.

It is not necessary that there is religious worship.

NOTE: Art. 133 is the only crime against the fundamental law of the State that may be committed not only by public officer but also by a private person.

Religious Ceremonies

Those religious acts performed outside of a church, such as processions and special prayers for burying dead persons (*Reyes, 2012*).

Act considered notoriously offensive

An act is considered notoriously offensive when the act is directed against religious practice or dogma or ritual for the purpose of ridicule, as mocking or scoffing at or attempting to damage an object of religious veneration (*People v. Baes, G.R. No. 46000, May 25, 1939*).

There must be deliberate intent to hurt the feelings of the faithful, mere arrogance or rudeness is not enough.

Q: Baes, while holding the funeral of Macabigtas, in accordance with the rites of a religious sect known as "Church of Christ" caused the funeral to pass through the churchyard belonging to the Roman Catholic Church. The parish priest filed a complaint against Baes for the violation of Article 133. Is Baes liable?

A: The SC held that the act imputed to the accused does not constitute the offense complained of. At most, they might be chargeable with having threatened the parish priest or with having passed through a private property without the consent of the owner. An act is said to be notoriously offensive to the religious feelings of the faithful when a person ridicules or makes light of anything constituting a religious dogma; works or scoffs at anything devoted to religious ceremonies; plays with or damages or destroys any object of

reverence by the faithful. The mere act of causing the passage through the churchyard belonging to the Church, of the funeral of one who in life belonged to the Church of Christ, neither offends or ridicules the religious feelings of those who belong to the Roman Catholic Church (*People v. Baes, ibid.*).

Q: While a "pabasa" was going on at a municipality in the Province of Tarlac, Reyes and his company arrived at the place, carrying bolos and crowbars, and started to construct a barbed wire fence in front of the chapel. The chairman of the committee in charge of the "pabasa" persuaded them to refrain from said acts. A verbal altercation then ensued. The people attending the "pabasa" left the place hurriedly in confusion and the "pabasa" was discontinued until after investigation. Reyes and his company, in their defense claim that the land where the chapel is built belongs to the Clemente family, of which they are partisans. Are the accused guilty of the crime under Art. 133?

A: The SC held that Art. 133 of the RPC punishes acts "notoriously offensive to the feelings of the faithful." The construction of a fence even though irritating and vexatious under the circumstances to those present, is not such an act as can be designated as "notoriously offensive to the faithful."

In this case, the accused were acquitted of a violation of Art. 133 of the RPC but they were found guilty of a violation of Art. 287 of the RPC for the circumstances showed that their acts were done in such a way as to vex and annoy the parties who had gathered to celebrate the "pabasa" (*People v. Reyes, et al., G.R. No. L-40577, August 23, 1934*).



CRIMES AGAINST PUBLIC ORDER

Political Crimes

Those that are directly aimed against the political order, as well as such common crimes as may be committed to achieve a political purpose. The decisive factor is the intent or motive.

**REBELLION OR INSURRECTION
ART. 134**

Nature of the crime of rebellion

Rebellion is a crime of the masses. It requires a multitude of people. It is a vast movement of men and a complex network of intrigues and plots.

Elements

1. That there be:
 - a. public uprising and
 - b. taking of arms against the Government.
2. Purpose of uprising or movement is either to:
 - a. Remove from the allegiance to said Government or its laws
 - i. The territory of the Philippines or any part thereof; or
 - ii. Any body of land, naval or other armed forces;
 - b. Deprive the Chief Executive or Congress, wholly or partially, any of their powers or prerogatives

Essence of the crime of rebellion

The essence of rebellion is public uprising and the taking of arms for the purpose of overthrowing the Government by force although it is not necessary that the rebels succeed in overthrowing the Government. It is generally carried out by civilians.

If there is no public uprising, the crime is *direct assault*.

NOTE: Actual clash of arms with the forces of the Government, not necessary to convict the accused who is in conspiracy with others actually taking arms against the Government.

Rebellion and Insurrection are not synonymous

REBELLION

INSURRECTION

Object of the movement is to completely overthrow and supersede the existing government.

It merely seeks to effect some change of minor importance, or to prevent the exercise of governmental authority with respect to particular matters or subjects.

Rebellion cannot be complexed with common crimes

Being within the purview of “engaging in war” and “committing serious violence,” said resort to arms, with the resulting impairment or destruction of life and property, constitutes not two or more offense, but only one crime that of rebellion plain and simple (*People v. Hernandez et al., G.R. No. L-6025-26, July 18, 1956*).

NOTE: Killing, robbing, etc, for *private purposes or profit* without any political motivation would be separately punished and would not be absorbed in the crime of rebellion (*People v. Geronimo et al., G.R. No. L-8936, October 23, 1956*).

Q: Is the ruling in Hernandez applicable even if the common crime committed is punishable by a special law?

A: YES. All crimes, whether punishable under a special or general law, which are mere components or ingredients, or committed in furtherance thereof, become absorbed in the crime of rebellion and cannot be isolated and charged as separate crimes themselves (*Ponce Enrile v. Amin, G.R. No. 93335, September 13, 1990*).

Q: As a result of the killing of SPO3 Jesus Lucilo, Elias Lovedioro was charged with and subsequently found guilty of the crime of murder. On appeal, Lovedioro claims that he should have been charged with the crime of rebellion, not murder as, being a member of the NPA, he killed Lucilo as a means to or in furtherance of subversive ends. The Solicitor General, opposing appellant’s claim, avers that it is only when the defense had conclusively proven that the motive or intent for the killing of the policeman was for “political and subversive ends” will the judgment of rebellion be proper. Between the appellant and the Solicitor General, who is correct?

A: The Solicitor General is correct. It is not enough that the overt acts of rebellion are duly proven. Both purpose and overt acts are essential

components of the crime. With either of these elements wanting, the crime of rebellion legally does not exist. If no political motive is established and proved, the accused should be convicted of the common crime and not of rebellion. In cases of rebellion, motive relates to the act, and mere membership in an organization dedicated to the furtherance of rebellion would not, by and of itself, suffice (*People v. Lovedioro*, G.R. No. 112235, November 29, 1995).

Q: For the killing of Redempto Manatad, a policeman and who was then in the performance of his official duties, accused Rodrigo Dasig, a self-confessed member of the sparrow unit, the liquidation squad of the NPA, was found guilty of murder with direct assault. On appeal, he claims that he should be convicted at most of simple rebellion and not murder with direct assault. Is the appeal meritorious?

A: YES, since the killing of Manatad is a mere component of rebellion or was done in furtherance thereof. It is of judicial notice that the sparrow unit is the liquidation squad of the New People's Army with the objective of overthrowing the duly constituted government. It is therefore not hard to comprehend that the killing of Manatad was committed as a means to or in furtherance of the subversive ends of the NPA. Consequently, appellant is liable for the crime of rebellion, not murder with direct assault upon a person in authority, as the former crime absorbs the crime of direct assault when done in furtherance thereof (*People v. Dasig, et. al.*, G.R. No. 100231, April 28, 1993).

Q: On May 5, 1992, at about 6:00 a.m., while Governor Alegre of Laguna was on board his car traveling along the National Highway of Laguna. Joselito and Vicente shot him on the head resulting in his instant death. At that time, Joselito and Vicente were members of the liquidation squad of the New People's Army and they killed the governor upon orders of their senior officer Commander Tiago. According to Joselito and Vicente, they were ordered to kill Governor Alegre because of his corrupt practices. If you were the prosecutor, what crime will you charge Joselito and Vicente? (BAR 1998)

A: If I were the prosecutor, I would charge Joselito and Vicente with the crime of rebellion, considering that they were members of the liquidation squad of the New People's Army and

the killing was upon orders of their commander; hence, politically-motivated (*People v. Avila*, G.R. No. 84612, March 11, 1992).

Rebellion vis-à-vis treason

REBELLION	TREASON
The uprising is against the government.	The levying of war is done to aid the enemy.
The purpose is to substitute the existing government with another.	The purpose is to deliver the government to the enemy.

Mere giving of aid or comfort is not criminal in cases of rebellion. There must be an actual participation. Hence, mere silence or omission of the public officer is not punishable in rebellion.

Theory of Absorption in Rebellion

If common crimes like homicide, murder, physical injuries, and arson have been committed in furtherance of, or in connection with rebellion, then it is considered as absorbed in the crime of rebellion. But before these common crimes can be absorbed, it is necessary that there is evidence to show that these common crimes has promoted or espoused the ideals of rebels. Absent this, it cannot be absorbed in the crime of rebellion.

COUP D'ETAT ART. 134-A

Elements

1. Offender is a person or persons belonging to the military or police or holding any public office or employment;
2. There be a swift attack accompanied by violence, intimidation, threat, strategy or stealth;
3. The purpose of the attack is seize or diminish State power; and
4. The attack is directed against duly constituted authorities of the Republic of the Philippines, or any military camp or installation, communication networks, public utilities or other facilities needed for the exercise and continued possession of power. **(BAR 2013)**

Essence of the crime of coup d'etat

The essence of the crime is a swift attack upon the facilities of the Philippine government, military



camps and installations, communication networks, public utilities and facilities essential to the continued possession of governmental powers.

Objective of *coup d'etat*

The objective of *coup d'etat* is to destabilize or paralyze the government through the seizure of facilities and utilities essential to the continued possession and exercise of governmental powers.

Principal offenders of *coup d'etat*

The principal offenders are members of the AFP or of the PNP organization or a public officer with or without civilian support.

Q: If a group of persons belonging to the armed forces makes a swift attack, accompanied by violence, intimidation and threat against a vital military installation for the purpose of seizing power and taking over such installation, what crime or crimes are they guilty of?(BAR 2002)

A: The perpetrators, being persons belonging to the Armed Forces, would be guilty of the crime of coup d'etat, under Article 134-A of the Revised Penal Code, as amended, because their attack was against vital military installations which are essential to the continued possession and exercise of governmental powers, and their purpose is to seize power by taking over such installations.

Coup d'etat vis-à-vis rebellion (BAR 1991, 1998, 2002, 2004)

BASIS	COUP D'ETAT	REBELLION
<i>Essence of the crime</i>	Essence is a swift attack against the government, its military camp or installations, communication network and public facilities and utilities essential to the continued exercise of governmental powers.	Essence of the crime is public uprising and taking up arms against the government.

<i>As to purpose</i>	The purpose is merely to paralyze the existing government.	The purpose is to overthrow the existing government.
<i>As to its commission</i>	May be carried out singly or simultaneously.	Requires a public uprising, or multitude of people.
<i>As to persons liable</i>	Principal offenders must be members of the military, national police or public officer, with or without civilian support.	Offenders need not be uniformed personnel of the military or the police.

**PENALTY FOR REBELLION OR
INSURRECTION OR COUP D'ETAT
ART. 135**

Persons liable for rebellion, insurrection or coup d'etat

1. **Leader**
 - a. Any person who promotes, maintains, or heads a rebellion or insurrection; or
 - b. Any person who leads, directs, or commands others to undertake *coup d'etat*.
2. **Participants**
 - a. Any person who participates or executes the commands of others in rebellion, or insurrection;
 - b. Any person in the government service who participates, or executes directions or commands of others in undertaking a *coup d'etat*; or
 - c. Any person not in the government service who participates, supports, finances, abets, or aids in undertaking a *coup d'etat*.

Pursuant to Section 28 and 29 of RA No 10591, the unlawful acquisition, possession of firearms and ammunition, and use of loose firearm, in furtherance of, or incident to, or in connection with the crime of rebellion or insurrection, or attempted coup d'etat, shall be absorbed as element of the crime of rebellion or insurrection, or attempted coup d'etat.

Q: If the attack is quelled but the leader is unknown, who shall be deemed the leader thereof? (BAR 2002)

A: The leader being unknown, any person who in fact directed the others, spoke for them, signed receipts and other documents issued in their name, or performed similar acts, on behalf of the rebels shall be deemed the leader of such rebellion, insurrection or *coup d'etat*.

Q: How is the crime of coup d'etat committed? (BAR 1991, 2012)

A: When a person holding public employment undertakes a swift attack, accompanied by strategy or stealth, directed against public utilities or other facilities needed for the exercise and continued possession of power for the purpose of diminishing state power.

**CONSPIRACY AND PROPOSAL TO COMMIT
COUP D'ETAT, REBELLION, OR INSURRECTION
ART. 136**

Crimes punished under this Article

1. Conspiracy to commit *coup d'etat*;
2. Proposal to commit *coup d'etat*;
3. Conspiracy to commit rebellion or insurrection (**BAR 2013**); and
4. Proposal to commit rebellion or insurrection.

Conspiracy to commit *coup d'etat*

There is conspiracy to commit *coup d'etat* when two or more persons belonging to the military or police or holding any public office or employment come to an agreement to seize or diminish State power through a swift attack accompanied by violence, intimidation, threat, strategy or stealth against duly constituted authorities of the Republic of the Philippines, or any military camp or installation, communication networks, public utilities or other facilities needed for the exercise and continued possession of power and decide to commit it.

Proposal to commit *coup d'etat*

There is proposal to commit *coup d'etat* when the person belonging to the military or police or holding any public office or employment who has decided to seize or diminish State power through a swift attack accompanied by violence, intimidation, threat, strategy or stealth against duly constituted authorities of the Republic of the Philippines, or any military camp or installation, communication networks, public utilities or other facilities needed for the exercise and continued

possession of power proposes its execution to some other person or persons.

Conspiracy to commit rebellion

There is conspiracy to commit rebellion when two or more persons come to an agreement to rise publicly and take arms against the government for any of the purposes of rebellion and decide to commit it.

Proposal to commit rebellion

There can be proposal to commit rebellion when the person who has decided to rise publicly and take arms against the government for any of the purposes of rebellion proposes its execution to some other person or persons.

Q: On account of the testimony of the prosecution's witness, the accused, together with some more or less forty persons who were said to be conspiring to overthrow the Government, was heard to have said, "What a life this is, so full of misery, constantly increasing. When will our wretchedness end? When will the authorities remedy it? What shall we do?" Is there a conspiracy?

A: NONE, as the prosecution failed to establish the existence of conspiracy to rebel by showing that there is (1) an agreement and (2) decision to commit rebellion. Mere words of discontent, although they reveal dissatisfaction on account of the evils, real or fictitious, to which they refer, are not alone sufficient to prove the existence of a conspiracy to rebel, much less with the aid of force, against the constituted Government (*U.S. v. Figueras, et. al., G.R. No. 1282, September 10, 1903*).

Q: Accused is the founder and leader of the Congress of Labor Organizations (CLO). The theory of the prosecution is that the accused has conspired with the Communist Party of the Philippines by giving monetary aid, among others, to help the Huks. Further, he gave speeches advocating the principles of Communism and urging his audience to join the uprising of laboring classes against America and the Quirino administration. Is the accused guilty of conspiracy to commit rebellion?

A: NO, as there was no evidence showing that those who heard his speeches there and then agreed to rise up arms to overthrow the government. Accused was merely a propagandist and indoctrinator of Communism, he was not a

Communist conspiring to commit the actual rebellion by the mere fact of his leadership of the CLO (*People v. Hernandez, G.R. No. L-6025, May 30, 1964*).

Q: VC, JG, and GG conspired to overthrow the Philippine Government. VG was recognized as the titular head of the conspiracy. Several meetings were held and the plan was finalized. JJ, bothered by his conscience, confessed to Father Abraham that he, VG, JG and GG have conspired to overthrow the government. Father Abraham did not report this information to the proper authorities. Did Father Abraham commit a crime? If so, what crime was committed? What is his criminal liability? (BAR 1994)

A: NO, Father Abraham did not commit a crime. His failure to report such conspiracy is due to an insuperable cause, one of the exempting circumstances under Article 12 of the RPC, as under our law, a priest cannot be compelled to disclose any information received by him by reason of confession made to him under his professional capacity.

NOTE: In the case of *U.S. v. Vergara*, the Supreme Court held that persons who may be held criminally liable under this Article are those who actually conspired with each other, not those who learned and failed to report the same to the authorities.

**DISLOYALTY OF PUBLIC OFFICERS OR EMPLOYEES
ART. 137**

Punishable acts of disloyalty

1. Failing to resist a rebellion by all the means in their power;
2. Continuing to discharge the duties of their offices under the control of the rebels; and
3. Accepting appointment to office under them.

The crime presupposes the existence of rebellion, but the offender under this article must not be in conspiracy with the rebels; otherwise, he will be guilty of rebellion, as the act of one is the act of all.

NOTE: The public officer or employee who performs any of the acts of disloyalty should not be in conspiracy with the rebels; otherwise, he will be guilty of rebellion, not merely disloyalty, because in conspiracy, the act of one is the act of all.

Q: Can the public officer plead Art. 11 or 12?

A: YES, i.e., insuperable cause. Disloyalty is an offense by omission.

**INCITING TO REBELLION OR INSURRECTION
ART. 138**

Elements

1. Offender does not take arms or is not in open hostility against the Government;
2. He incites others to rise publicly and take arms against the Government for any of the purposes of the rebellion; and
3. The inciting is done by means of speeches, proclamations, writings, emblems, banners or other representations tending to the same end.

The act of inciting must have been intentionally calculated to induce others to commit rebellion.

Inciting to rebellion vis-à-vis Proposal to commit rebellion

INCITING TO REBELLION	PROPOSAL TO COMMIT REBELLION
It is not required that the offender has decided to commit rebellion.	The person who proposes has decided to commit rebellion.
The act of inciting is done publicly.	The person who proposes the execution of the crime uses secret means.

NOTE: In both proposal and inciting to commit rebellion, the crime of rebellion should not be actually committed by the persons to whom it is proposed or who are incited. If they commit the rebellion because of the proposal or the inciting, the proponent or the one inciting becomes a principal by inducement in the crime of rebellion, provided that the requisites of Paragraph No. 2 of Article 17 of the RPC are present.

**SEDITION
ART. 139**

Elements

1. Offenders rise (1) publicly and (2) tumultuously;
2. They employ force, intimidation, or other means outside of legal methods; and

3. The offenders employ any of those means to attain any of the following objects or purposes:
- Prevent the promulgation or execution of any law or the holding of any popular election;
 - Prevent the National Government, or any provincial or municipal government, or any public officer thereof from freely exercising its or his functions, or prevent the execution of any administrative order;
 - Inflict any act of hate or revenge upon the person or property of any public officer or employee;
 - Commit for any political or social end any act of hate or revenge against private persons or any social class; and
 - Despoil, for any political or social end, any person, municipality or province, or the National Government of all its property or any part thereof.

NOTE: Participants must at least be four (4) in numbers.

Nature of sedition

It is a violation of the public peace or at least such a course of measures as evidently engenders it, yet it does not aim at direct and open violence against the laws, or the subversion of the Constitution. It is an offense not directed primarily against individuals but to the general public peace; it is the raising of commotions or disturbances in the State, a revolt against legitimate authority (*People v. Perez, G.R. No. L-21049, December 22, 1923*).

Main Objective

The ultimate object of sedition is a violation of the public peace or at least such a course of measures as evidently engenders it.

Sedition does not contemplate rising up of arms against government

The purpose of the offenders in rising publicly is merely to create commotion and disturbance by way of protest to express their dissent and disobedience to the government or to the authorities concerned.

NOTE: The objective of sedition is not always against the government, its property or officer. It could be against a private person or social class.

“Tumultuous”

The disturbance or interruption shall be deemed to be tumultuous if caused by more than three persons who are armed or provided with means of violence (*Art. 153, RPC*).

Q: Upon the opening of the session of the municipal council of San Carlos, Occidental Negros, a large number of the town residents assembled near the municipal building to demand the dismissal from office of the municipal treasurer, the secretary and chief of police. The persons who took part therein were wholly unarmed while a few carried canes. The crowd was fairly orderly and well behaved. The council acceded to their wishes. They were charged with sedition. Will the case prosper?

A: NO, there was no sedition because there was no public and tumultuous uprising. While it is true that the council acceded to the demands of the assembly through fear and under the influence of the threatening attitude of the crowd, it is rather expected that more or less disorder will mark the public assembly of the people to protest against grievances. The prosecution should not be permitted to seize upon every instance of disorderly conduct by individual members of a crowd as an excuse to characterize the assembly as a seditious and tumultuous rising against the authorities. Utmost discretion must be exercised in drawing the line between disorderly and seditious conduct and between an essentially peaceable assembly and a tumultuous uprising (*U.S. v. Apurado, et. al, G.R. No. 1210, February 7, 1907*).

Q: Appellant, with about twenty armed men and Huk Commander Torio, raided and attacked the house of Punzalan, his political adversary and incumbent Mayor of Tiaong, Quezon, with automatic weapons, hand grenades, and bottles filled with gasoline. The raid resulted not only in destruction of Punzalan’s house and that of others but also in the death and injuries to a number of civilians. The CFI found appellant guilty of the complex crime of rebellion with multiple murder, among others. Was the lower court correct?

A: NO. The accused is guilty of sedition, multiple murder and physical injuries, among others. The purpose of the raid and the act of the raiders in rising publicly and taking up arms was not exactly against the Government and for the purpose of doing the things defined in Article 134 of the



Revised Penal code under rebellion. The raiders did not even attack the Presidencia, the seat of local Government. Rather, the object was to attain by means of force, intimidation, etc. one object, to wit, to inflict an act of hate or revenge upon the person or property of a public official, namely, Punzalan was then Mayor of Tiaong. Under Article 139 of the same Code this was sufficient to constitute sedition (*People v. Umali, et. al., G.R. No. L-5803, November 29, 1954*).

Sedition vis-à-vis Rebellion

BASIS	SEDITION	REBELLION
<i>As to its commission</i>	It is sufficient that public uprising be tumultuous.	There must be taking up of arms against the government.
<i>As to purpose</i>	May be political or social, that is merely to go against the established government not to overthrow it.	Always political, that is to overthrow the government.
<i>As to absorption of other crimes</i>	Crime associated with sedition can be prosecuted.	Offenses committed pursuant to rebellion are absorbed.

NOTE: What distinguishes sedition from rebellion is not the extent of the territory covered by the uprising but rather the object at which the uprising aims.

Sedition vis-à-vis Treason

SEDITION	TREASON
Sedition is the raising of commotions or disturbances in the State.	Treason is a violation by a subject of his allegiance to his sovereign or the supreme authority of the State.

Sedition vis-à-vis Crime of tumults and other disturbance of public order

SEDITION	TUMULTS AND OTHER DISTURBANCE OF PUBLIC ORDER
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Sedition involves disturbance of public order resulting from tumultuous uprising.

There is no public uprising.

Crime committed if there is no public uprising

If the purpose of the offenders is to attain the objects of sedition by force or violence, but there is no public uprising, the crime committed is direct assault.

PENALTY FOR SEDITION ART. 140

Persons liable for sedition with the corresponding penalties

1. The leader – *prision mayor in its minimum period, fine not exceeding Php10,000*
2. Other persons participating in the sedition – *prision correccional in its maximum period, fine not exceeding Php5,000*

CONSPIRACY TO COMMIT SEDITION ART. 141

Conspiracy to commit sedition

There is conspiracy to commit sedition when two or more persons come to an agreement to rise publicly and tumultuously to attain any of the objects specified in Art. 139 and they decide to commit it.

NOTE:

There is no crime of proposal to commit sedition; only conspiracy is punished and not proposal to commit sedition.

INCITING TO SEDITION ART. 142

Acts of inciting to sedition (BAR 2007)

1. Inciting others to the accomplishment of any of the acts which constitute sedition by means of speeches, proclamations, writings, emblems, etc.;
2. Uttering seditious words or speeches which tend to disturb the public peace; and
3. Writing, publishing, or circulating scurrilous libels against the Government or any of the duly constituted authorities thereof, which tend to disturb the public peace.

In inciting to sedition, the offender must not take part in any public or tumultuous uprising.

Uttering seditious words/speeches and writing, publishing or circulating scurrilous libels

They are punishable when they:

1. Tend to disturb or obstruct any lawful officer in executing the functions of his office;
2. Tend to instigate others to cabal and meet together for unlawful purposes;
3. Suggest or incite rebellious conspiracies or riots; and
4. Lead or tend to stir up the whole people against the lawful authorities or to disturb the peace of the community, the safety and order of the Government.

NOTE: *Scurrilous* means low, vulgar, mean or foul.

NOTE: It is not necessary, in order to be seditious, that the words used should in fact result in a rising of the people against the constituted authorities. The law is not aimed merely at actual disturbance, as its purpose is also to punish utterances which may endanger public order.

Q: The accused was heard to have shouted a number of times: "The Filipinos, like myself, must use bolos for cutting off Wood's head for having recommended a bad thing for the Filipinos, for he has killed our independence." What crime did the accused commit?

A: The accused uttered seditious words, a violation of Article 142 of the RPC. While criticism, no matter how severe, must be permitted, one that has for its intent and effect is seditious must not be tolerated. A statement is seditious when it is tended to stir up the people against the lawful authorities, one that will disturb the peace of the community and the safety or order of the Government, instigate others to cabal or meet together for unlawful purposes, or suggests and incites rebellious conspiracies. All its various tendencies can be ascribed to the statement of the accused (*People v. Perez*, G.R. No. L-21049, December 22, 1923).

Q: After having his picture taken as one lifeless Alberto Reveniera, hanging by the end of a rope tied to a limb of a tree, accused Oscar Espuelas sent a suicide note to several newspapers and weeklies, which contain: "If someone asks to you why I committed suicide,

tell them I did it because I was not pleased with the administration of Roxas; the government is infested with many Hitlers and Mussolinis; teach our children to burn pictures of Roxas." What crime did the accused commit?

A: The letter is a scurrilous libel against the Government. Writings which tend to overthrow or undermine the security of the government or to weaken the confidence of the people in the government are against the public peace, and are criminal not only because they tend to incite to a breach of the peace but because they are conducive to the destruction of the very government itself. Such are regarded as seditious libels (*Espuelas v. People*, G.R. No. L-2990, December 17, 1951).

Rules relative to seditious words

1. Clear and present danger rule: words must be of such nature that by uttering them there is a danger of public uprising and that such danger should be both clear and imminent
2. Dangerous tendency rule: if words used tend to create a danger of public uprising, then those words could properly be subject of penal clause

It is the dangerous tendency rule that is generally adopted in the Philippines with respect to sedition cases. It is enough that the words used may tend to create danger of public uprising.

Instances of inciting to sedition

1. Meeting for the purpose of discussing hatred against the government; or
2. Lambasting government officials to discredit the government.

If the objective of the abovementioned acts is to overthrow the government, the crime would be *inciting to rebellion*.

Reasons why seditious utterances are prohibited

The legislature has the authority to forbid the advocacy of a doctrine designed and intended to overthrow the Government without waiting until there is a present and immediate danger of the success of the plan advocated. If the State was compelled to wait until the apprehended danger became certain, then its right to protect itself would come into being simultaneously with the overthrow of the Government, when there would

be neither prosecuting officers nor courts for the enforcement of the law (*Gitlow v. New York*, 268 U.S. 652).

**ACTS TENDING TO PREVENT THE MEETING OF
THE NATIONAL ASSEMBLY AND SIMILAR
BODIES
ART. 143**

Elements

1. That there be a projected or actual meeting of the National Assembly (Congress of the Philippines) or any of its committees or subcommittees, constitutional committees or divisions thereof, or any of the provincial board or city or municipal council or board; and
2. Offender who may be any person prevents such meeting by force or fraud.

The crime is against popular representation because it is directed against officers whose public function is to enact laws. When these legislative bodies are prevented from performing their duties, the system is disturbed.

NOTE: Chief of police and mayor who prevented the meeting of the municipal council are liable under Article 143, when the defect of the meeting is not manifest and requires an investigation before its existence can be determined.

**DISTURBANCE OF PROCEEDINGS
ART. 144**

Elements

1. That there be a meeting of the National Assembly (Congress of the Philippines) or any of its committees or subcommittees, constitutional commissions or committees or divisions thereof, or of any provincial board or city or municipal council or board; and
2. Offender does any of the following acts:
 - a. Disturbs any of such meetings; or
 - b. Behaves while in the presence of any such bodies in such a manner as to interrupt its proceedings or to impair the respect due it.

NOTE: The implied power to punish for contempt of the National Assembly is *coercive* in nature. The power to punish crime is *punitive* in character. Thus, the same act could be made the basis for contempt proceedings and for criminal prosecution.

The disturbance can be in the form of utterances, speeches or any form of expressing dissent which is done in such a manner as to interrupt its proceedings or to impair the respect due it.

Q: Suppose the meeting disturbed is one attended by municipal officials called by the mayor, is the offender liable under Article 144?

A: NO, because this article presupposes that the meeting disturbed is that of a legislative body or of provincial, city, or municipal council or board. Here, the offender may be liable of unjust vexation under Art. 287 (*People v. Calera, et.al*, C.A. 45 O.G. 2576).

The same act may be made the basis for contempt since it is coercive in nature while the crime under this article is punitive.

**VIOLATION OF PARLIAMENTARY IMMUNITY
ART. 145**

Acts punishable under this crime

1. By using force, intimidation, threats, or fraud to prevent any member of the National Assembly (Congress of the Philippines) from:
 - a. Attending the meetings of the Assembly or of any of its committees or subcommittees, constitutional commissions or committees or divisions thereof, or
 - b. From expressing his opinions or
 - c. Casting his vote

The offender in this case may be *any person*.

2. By arresting or searching any member thereof while the National Assembly is in regular or special session, except in case such member has committed a crime punishable under the Code by a penalty higher than *prision mayor*.

It is not necessary that the member is actually prevented from exercising any of his functions. It is sufficient that Congress is in session and the offender, in using force and intimidation, threats, or frauds, has the purpose to prevent a member of the National Assembly from exercising any of such prerogatives (*Reyes, 2012*).

NOTE: Parliamentary immunity does not protect members of the National Assembly from responsibility before the legislative body itself.

“Session”

The term “session” refers to the entire period of time from its initial convening until its final adjournment.

Q: What is the criminal liability, if any, of a police officer who, while Congress was in session, arrested a member thereof for committing a crime punishable by a penalty higher than *prision mayor*? (BAR 2012)

A: The police officer incurs no criminal liability because the member of Congress has committed a crime punishable by a penalty higher than *prision mayor*.

**ILLEGAL ASSEMBLIES
ART. 146**

Forms of illegal assemblies and their elements

1. Any meeting attended by armed persons for the purpose of committing any of the crimes punishable under the Code.

Elements:

- a. There is a meeting, a gathering or group of persons, whether in a fixed place or moving;
- b. The meeting is attended by armed persons; and
- c. The purpose of the meeting is to commit any of the crimes punishable under the Code.

2. Any meeting in which the audience, whether armed or not, is incited to the commission of the crime of treason, rebellion or insurrection, sedition or direct assault

Elements:

- a. There is a meeting, a gathering or group of persons, whether in a fixed place or moving; and
- b. The audience, whether armed or not, is incited to the commission of the crime of treason, rebellion or insurrection, sedition or direct assault.

If the person present carries an unlicensed firearm, the presumption, insofar as he is concerned, is that the purpose of the meeting is to commit acts punishable under this Code, and that he is the leader or organizer of the meeting.

Importance of common intent

Persons merely present at the meeting should have a common intent to commit the felony of illegal assembly; absence of such intent may exempt the person present from criminal liability.

If the presence of a person in the meeting is merely out of curiosity, he is not liable because he does not have an intent to commit the felony of illegal assembly.

Criminal liability of the person inciting

The person inciting is liable for the crime of inciting to rebellion or sedition.

Gravamen of illegal assembly

The gravamen of illegal assembly is mere assembly of or gathering of people for illegal purpose punishable by the RPC. Without gathering, there is no illegal assembly.

Persons liable for illegal assembly

1. Organizers or leaders of the meeting; and
2. Persons merely present at the meeting.

Responsibility of persons merely present at the meeting:

1. If they are *not armed*, the penalty is *arresto mayor*
2. If they are armed, the penalty is *prision correccional*.

If the gathering is for the commission of a crime punishable under special laws

If the illegal purpose for the gathering is for the commission of a crime punishable under special laws, illegal assembly is not committed. The crime committed would be illegal association.

**ILLEGAL ASSOCIATIONS
ART. 147**

Illegal associations

1. Associations totally or partially organized for the purpose of committing any of the crimes punishable under the Code; or
2. Associations totally or partially organized for some purpose contrary to public morals.

Public morals refer to matters which affect the interest of society and public inconvenience and are not limited to good customs. It refers to acts



that are in accordance with natural and positive laws.

Persons liable for the crime of illegal associations

1. Founders, directors and president of the association; and
2. Mere members of the association.

Illegal assembly vis-à-vis Illegal association

BASIS	ILLEGAL ASSEMBLY	ILLEGAL ASSOCIATION
<i>Basis of liability</i>	The gathering for an illegal purpose which constitutes a crime under the RPC.	The formation of or organization of an association to engage in an unlawful purpose which is not limited to a violation of the RPC.
<i>Necessity of actual meeting</i>	Necessary that there is an actual meeting or assembly.	Not necessary that there be an actual meeting.
<i>Acts punished</i>	Meeting and the attendance at such meeting are the acts punished.	Act of forming or organizing and membership in the association are the acts punished.

**DIRECT ASSAULTS
ART. 148**

Ways of committing the crime of direct assault

1. Without public uprising, by employing force or intimidation for the attainment of any of the purposes enumerated in defining the crimes of rebellion and sedition; and
2. Without public uprising, by attacking, by employing force or by seriously intimidating or by seriously resisting any person in authority or any of his agents, while engaged in the performance of official duties, or on the occasion of such performance. **(BAR 2009, 2013, 2015)**

Elements of the first form

1. Offender employs force or intimidation;
2. The aim of the offender is to attain any of the purposes of the crime of rebellion or any of the objects of the crime of sedition; and
3. There is no public uprising.

NOTE: The act of the accused in preventing by *force* the holding of a popular election in certain precincts, *without* public uprising, is direct assault.

Q: As the town president failed to pay their salaries, the defendant, accompanied by four armed men, went to the house of the former and compelled him by force to leave it and go to the Presidencia. He kept him there confined until the relatives of the town president had raised enough money to pay what was due them as salaries. What crime did the accused commit?

A: The facts constitute the crime of direct assault. There is no public uprising when the accused, accompanied by armed men, compelled by force the town president to go with them to proceed to the municipal building and detained him there. By reason of detaining the town president, he inflicted upon a public officer an act of hate or revenge. This is one of the objects of sedition, which is essentially what the accused intended to attain (*U.S. v. Dirain, G.R. No. 1948, May 5, 1905*).

Elements of the second form (BAR 1993, 1995, 2000, 2001, 2002)

1. Offender:
 - a. Makes an attack,
 - b. Employs force,
 - c. Makes a serious intimidation, or
 - d. Makes a serious resistance;
2. Person assaulted is a person in authority or his agent;
3. That at the time of the assault the person in authority or his agent:
 - a. Is engaged in the performance of official duties, or that he is assaulted
 - b. On occasion of such performance;
4. The offender knows that the one he is assaulting is a person in authority or his agent in the exercise of his duties; and
5. There is no public uprising.

“On occasion of the performance of official duties”

It means that the assault was made because or by reason of the past performance of official duties even if at the very time of the assault no official duty was being discharged (*Justo v. CA, G.R. No. L-8611, June 28, 1956*).

In this form, there is a need to determine the reason why a person in authority or his agent was attacked. If the attack was made by reason of the past performance of official duties of the person in authority or his agent, the accused is liable for direct assault. If the attack was made by reason of revenge, then the accused shall not be liable under this article, but for physical injuries.

If the attack was done while the person in authority or his agent is engaged in the actual performance of official functions, the crime is always direct assault, whatever be the reason.

Not in actual performance of official duties

The following are considered as not in actual performance of official duties:

1. When the person in authority or the agent of a person in authority exceeds his powers or acts without authority;
2. Unnecessary use of force or violence; and
3. Descended to matters which are private in nature.

"Qualified direct assault"

Direct assault is qualified when:

1. Assault is committed with a weapon;
2. The offender is a public officer or employee; or
3. Offender lays hands upon a person in authority.

No liability under Art. 148 for Direct Assault

1. If the public officer or officer in authority is a mere bystander;
2. If the accused did not know that the victim was a person in authority; or
3. If the person assaulted was no longer a public officer at the time of the attack even if the reason for the attack was due to past performance of duties.

Q: When the policemen effected the arrest of the accused, he approached them and hit one of them in the breast with his hand or fist, at which instant the policeman seized him by the

wrist and resistance ceased. Is the accused guilty of direct assault?

A: NO, as when the offended party is agent of person in authority, any force or aggression is not sufficient constitute to an assault. To come within the purview of Art. 148, the force used against the agent of a person in authority must be of serious character than that employed in this case. Logic tells us that resistance is impossible without force (*U.S. v. Tabiana, G.R. No. L-11847, February 1, 1918*).

Q: When the news that his carabao, which earlier destroyed a planted area belonging to another, was seized and taken to the police station reached the accused, he confronted and protested to the municipal president, who was then inspecting the quarantine of the animals. The president, upon hearing his protest, promised to intervene in the matter and to see whether the carabao could be withdrawn. Upon hearing this, the accused insulted the president and gave him a slap on the face. What crime did the accused commit?

A: The accused committed direct assault upon a person in authority. When the offended party is a person in authority, it is not necessary to ascertain what force the law requires in order to constitute an assault since the law itself defines concretely this force in providing that it consists in mere laying of hands upon the person. The degree of force employed by the offender against the person in authority is immaterial as the law simply mentions the laying of hands sufficient (*U.S. v. Gumban, G.R. No. L-13658, November 9, 1918*).

NOTE: If the intent of the accused is to embarrass the person in authority, the offense is Direct Assault with Slander by Deed.

Q: Who are deemed to be persons in authority and agents of persons in authority? (BAR 1995, 2000, 2002)

A: Persons in authority are those directly vested with jurisdiction, whether as an individual or as a member of some court or government corporation, board, or commission. Barrio captains and barangay chairmen are also deemed persons in authority.

Agents of persons in authority are persons who by direct provision of law or by election or by appointment by competent authority, are charged with maintenance of public order, the protection and security of life and property, such as barrio

councilman, barrio policeman, barangay leader and any person who comes to the aid of persons in authority.

In applying the provisions of Arts. 148 and 151 of the RPC, teachers, professors and persons charged with the supervision of public or duly recognized private schools, colleges and universities, and lawyers in the actual performance of their professional duties or on the occasion of such performance, shall be deemed persons in authority.

Q: Lydia and Gemma, were public school teachers. Lydia's son was a student of Gemma. Lydia confronted Gemma after learning from her son that Gemma called him a "sissy" while in class. Lydia slapped Gemma in the cheek and pushed her, thereby causing her to fall and hit a wall divider. As a result of Lydia's violent assault, Gemma suffered a contusion in her "maxillary area", as shown by a medical certificate issued by a doctor, and continued to experience abdominal pains. To what crime, if any, is Lydia liable?

A: Lydia is liable for direct assault upon a person in authority. On the day of the commission of the assault, Gemma was engaged in the performance of her official duties, that is, she was busy with paperwork while supervising and looking after the needs of pupils who are taking their recess in the classroom to which she was assigned. Lydia was already angry when she entered the classroom and accused Gemma of calling her son a "sissy". Gemma being a public school teacher, belongs to the class of persons in authority expressly mentioned in Article 152 of the Revised Penal Code, as amended (*Gelig v. People, G.R. No. 173150, July 28, 2010*).

Crime of direct assault can be complexed with the material consequence of the unlawful act

As a rule, where the spirit of the contempt or lawlessness is present, it is always complexed with the material consequences of the unlawful act. If the unlawful act was murder or homicide committed under circumstance of lawlessness or contempt of authority, the crime would be direct assault with murder or homicide, as the case may be.

However, when the material consequence is a light felony, such as slight physical injuries, the said offense is not complexed with direct assault because the said injuries are considered as an

incident or a necessary consequence of the force or violence inherent in all kinds of assault.

Q: Because of the approaching town fiesta in San Miguel, Bulacan, a dance was held in Barangay Carinias. A, the Barangay Captain, was invited to deliver a speech to start the dance. While A was delivering his speech, B, one of the guests, went to the middle of the dance floor making obscene dance movements, brandishing a knife and challenging everyone present to a fight. A approached B and admonished him to keep quiet and not to disturb the dance and peace of the occasion. B, instead of heeding the advice of A, stabbed the latter at his back twice when A turned his back to proceed to the microphone to continue his speech. A fell to the ground and died. At the time of the incident A was not armed. What crime was committed? (BAR 2000)

A: The complex crime of direct assault with murder was committed. Since A was stabbed at the back when he was not in a position to defend himself nor retaliate, there was treachery in the stabbing. Hence, the death caused by such stabbing was murder. The Barangay Captain was in the act of trying to pacify B who was making trouble in the dance hall when he was stabbed to death. He was therefore killed while in the performance of his duties. In the case of *People v. Hecto*, the Supreme Court ruled that "as the barangay captain, it was his duty to enforce the laws and ordinances within the barangay. If in the enforcement thereof, he incurs, the enmity of his people who thereafter treacherously slew him, the crime committed is murder with assault upon a person in authority" (*People v. Dollantes, G.R. No. 70639, June 30, 1987*).

**INDIRECT ASSAULTS
ART. 149**

Elements

1. An agent of a person in authority is the victim of any of the forms of direct assault defined in Art. 148;
2. A person comes to the aid of such authority; and
3. That the offender makes use of force or intimidation upon such person coming to the aid of the authority or his agent.

Victim in Indirect Assault

The victim in the crime of indirect assault is not the person in authority or his agent but the person who comes to the aid of the agent of a person in authority.

NOTE: Article 149 says “on occasion of the commission of any of the crimes defined in the next preceding article” (Art. 148) hence, indirect assault can be committed only when direct assault is also committed.

Commission of Indirect assault

As Art. 149 now stands, the crime of indirect assault can only be committed if a private person comes to the aid of the agent of a person in authority, on the occasion of direct assault against the latter.

NOTE: When any person comes to the aid of a *person in authority*, he is constituted as an agent of the person in authority (*Art. 152, as amended*). If such person was the one attacked, by employing violence against him of serious nature or character, the crime would be direct assault.

DISOBEDIENCE TO SUMMONS ISSUED BY THE NATIONAL ASSEMBLY OR CONSTITUTIONAL COMMISSIONS ART. 150

Acts punished as disobedience to the National Assembly (Congress) or Constitutional Commission

1. Refusing, without legal excuse, to obey summons of the National Assembly, its special or standing committees and subcommittees, the Constitutional commissions and its committees, subcommittees or divisions, or by any commission or committee chairman or member authorized to summon witnesses;
2. Refusing to be sworn or placed under affirmation while being before such legislative or constitutional body or official;
3. Refusing to answer any legal inquiry or to produce any books, papers, documents, or records in his possession, when required by them to do so in the exercise of their functions;
4. Restraining another from attending as a witness in such legislative or constitutional body; or
5. Inducing disobedience to a summons or refusal to be sworn by any such body or official.

Any of the acts enumerated may also constitute contempt of Congress and could be punished as such independent of the criminal prosecution.

NOTE: This Article does not apply when the papers or documents may be used in evidence against the owner thereof because it would be equivalent to compelling him to be witness against himself (*Uy Khaytin v. Villareal, 42 Phil. 886*). The law only penalizes refusal without legal excuse.

Persons liable under Art. 150

1. Any person who commits any of the above acts
2. Any person who:
 - a. Restrains another from attending as a witness;
 - b. Induces him to disobey a summons; and
 - c. Induces him to refuse to be sworn to such body.

RESISTANCE AND DISOBEDIENCE TO A PERSON IN AUTHORITY OR HIS AGENTS ART. 151

Elements of resistance and serious disobedience (BAR 1990, 2001)

1. A person in authority or his agent is engaged in the performance of official duty or gives a lawful order to the offender;
2. The offender resists or seriously disobeys such person in authority or his agent; and
3. That the act of the offender is not included in the provisions of Arts. 148, 149, and 150.

The word *seriously* is not used to describe resistance, because if the offender seriously resisted a person in authority or his agent, the crime is direct assault (*Reyes, 2012*).

No force is employed

If *no force is employed* by the offender in resisting or disobeying a person in authority, the crime committed is resistance or serious disobedience under the first paragraph of Article 151.

Elements of simple disobedience

1. An agent of a person in authority is engaged in the performance of official duty or gives a lawful order to the offender;
2. The offender disobeys such agent of a person in authority; and
3. Such disobedience is not of a serious nature.

NOTE: When the attack or employment of force is not deliberate, the crime is only resistance or disobedience

Q: After an unfavorable decision against the defendant in an action filed against him by one Sabino Vayson in an action for recovery of land, the deputy sheriff Cosmo Nonoy, by virtue of a writ, demanded from the defendant the delivery the possession of the said land to Vayson which the former refuse to do so. By reason thereof, the provincial fiscal filed the Information against the defendant for gross disobedience to authorities. Defendant filed a demurrer on the ground that the facts do not constitute a crime, which the court sustained. Is the court correct in doing so?

A: YES, as the defendant did not disobey any order of the justice of peace. The disobedience contemplated in Art. 151 consists in the failure or refusal of the offender to obey a direct order from the authority or his agent. Here, the order issued is a writ of execution, one that is addressed properly to a competent sheriff and not to the defendant. Absolutely no order whatsoever is made to the latter; the writ or order in question in no wise refers to him. Hence, he could not commit the crime he was charged (*U.S. v. Ramayrat, G.R. No. L-6874, March 8, 1912*).

Q: Defendant appealed from the decision of the lower court finding him guilty of assault upon agents of authority when he resisted the arrest effected by them. The record shows that the policeman entered the house of the defendant without permission and attempted to arrest the defendant without explaining to him the cause or nature of his presence there. Resisting the arrest, he called to his neighbours for help, "there are some bandits here and they are abusing me." Based on the foregoing, is the defendant guilty of the crime of assault upon agents of authority?

A: NO, as the defendant's resistance is attributable to his belief that the policemen were actually bandits. In order to come within the purview of the law, the offender must have knowledge that the person he is assaulting is an agent of or a person in authority. What the law contemplates is the punishment of persons for resistance of the authorities who knew to be one. If the defendant believed that those who had entered his house were, in fact, bandits, he was entirely justified in calling his neighbors and making an attempt to expel them from his premises (*U.S. v. Bautista, G.R. No. L-10678, August 17, 1915*).

Q: Sydeco, the cook and waitress in his restaurant were on the way home when they were signaled to stop by police officers who asked him to open the vehicle's door and alight for a body and vehicle search. When Sydeco instead opened the vehicle window and insisted on a plain view search, one of the policemen, obviously irked by this remark told him that he was drunk, pointing to three empty beer bottles in the trunk of the vehicle. The officers then pulled Sydeco out of the vehicle and brought him to the Ospital ng Maynila where they succeeded in securing a medical certificate under the signature of one Dr. Harvey Balucating depicting Sydeco as positive of alcoholic breath, although no alcohol breath examination was conducted. Sydeco was detained and released only in the afternoon of the following day when he was allowed to undergo actual medical examination where the resulting medical certificate indicated that he has sustained physical injuries but negative for alcohol breath. Is Sydeco criminally liable under Article 151 of the RPC?

A: NO. Sydeco's twin gestures cannot plausibly be considered as resisting a lawful order. There can be no quibble that the police officer and his apprehending team are persons in authority or agents of a person in authority manning a legal checkpoint. But surely petitioner's act of exercising one's right against unreasonable searches to be conducted in the middle of the night cannot, in context, be equated to disobedience let alone resisting a lawful order in contemplation of Art. 151 of the RPC (*Sydeco v. People, G.R. No. 202692, November 12, 2014*).

Resistance or serious disobedience vis-à-vis Direct assault

BASIS	RESISTANCE/ SERIOUS DISOBEDIENCE	DIRECT ASSAULT
<i>As to offended party</i>	Person in authority or his agent must be in the actual performance of his duties.	Person in authority or his agent must be engaged in the performance of official duties or that he is assaulted by reason thereof.

As to its commission	Committed only by resisting or seriously disobeying a person in authority or his agent.	Committed by any of the following: 1. Attacking. 2. Employing force 3. Seriously intimidating 4. Seriously resisting a person in authority or his agent.
As to force used	The use of force is not so serious, as there is no manifest intention to defy the law and the officers enforcing it.	The attack or employment of force which gives rise to the crime of direct assault must be serious and deliberate.

NOTE: If the person who was resisted is a person in authority and the offender used force in such resistance, the crime committed is direct assault. The use of any kind or degree of force will give rise to direct assault.

However, if the offender did not use any force in resisting a person in authority, the crime committed is resistance or serious disobedience.

**PERSONS IN AUTHORITY AND AGENTS OF
PERSON IN AUTHORITY
ART. 152**

Person in authority

Persons in authority are those directly vested with jurisdiction, whether as an individual or as a member of some court or government corporation, board, or commission. **(BAR 2000)** *Barrio captains* and *barangay chairmen* are also deemed persons in authority **(BAR 1995)**.

The following are persons in authority:

1. Mayors;
2. Division superintendent of school;
3. Public and private school teachers;
4. Provincial Fiscal;
5. Judges;
6. Lawyers in actual performance of duties;
7. Sangguniang Bayan member;
8. Barangay Chairman; and
9. Members of the Lupong Tagapamayapa.

Note: Items 7, 8, and 9 of the enumeration are added by the LGC which expressly provides that said persons "shall be deemed as person(s) in authority in their jurisdictions" (*Sec. 388, LGC*)

Agent of a person in authority (APA)

Any person who by direct provision of law or by election or by appointment by competent authority is charged with the:

1. Maintenance of public order; and
2. Protection and security of life and property.

Note: Agents of persons in authority includes:

1. *Barangay Kagawad*
2. *Barangay Tanod*
3. *Barangay Councilman*
4. Any person who comes to the aid of persons in authority.

**TUMULTS AND OTHER DISTURBANCES
OF PUBLIC DISORDER
ART. 153**

Tumults and other disturbances of public order

They are:

1. Causing any serious disturbance in a public place, office, or establishment;
2. Interrupting or disturbing performances, functions or gatherings, or peaceful meetings, if the act is not included in Arts. 131 and 132;

Note: The crime is qualified if disturbance or interruption is of a tumultuous character.

3. Making any outcry tending to incite rebellion or sedition in any meeting, association or public place;
4. Displaying placards or emblems which provoke a disturbance of public disorder in such place;
5. Burying with pomp the body of a person who has been legally executed.

Note: Burying with pomp the body of a person contemplates an ostentatious display of a burial as if the person legally executed is a hero.

Essence of tumults and other disturbances

The essence of this crime is creating public disorder. This crime is brought about by creating serious disturbances in public places, public buildings, and even in private places where public functions or performances are being held.

Note: If the act of disturbing or interrupting a meeting or religious ceremony is not committed by public officers, or if committed by public officers they are participants therein, Article 153 should be applied.

Q: When is the disturbance of public order deemed to be tumultuous? (BAR 2012)

A: The disturbance shall be deemed tumultuous if caused by more than three persons who are armed or provided with means of violence.

Outcry

Outcry means to shout subversive or provocative words tending to stir up the people to obtain by means of force or violence any of the objects of rebellion or sedition. The outcry must be spontaneous; otherwise it would be the same as inciting to rebellion or sedition. (*Reyes, 2012*)

Making any outcry tending to incite sedition or rebellion (Art. 153, par. 3) vis-à-vis inciting to rebellion or sedition

MAKING ANY OUTCRY TENDING TO INCITE SEDITION OR REBELLION	INCITING TO SEDITION OR REBELLION
The meeting at the outset was legal, and became a public disorder only because of such outcry.	The meeting from the beginning was unlawful.
The outbursts which by nature may tend to incite rebellion or sedition are spontaneous.	The words uttered are deliberately calculated with malice, aforethought to incite others to rebellion or sedition.

Q: Defendant Ladislao Bacolod fired a submachine gun during the town fiesta which wounded one Consorcia Pasinio. The Information was filed charging him of the crime of serious physical injuries thru reckless imprudence with the CFI of Cebu to which the defendant pleaded guilty. On the same date, he was arraigned in another case for having caused a public disturbance upon the same facts which constitute the same basis of the indictment for serious physical injuries. Counsel for defendant moved to quash the

second Information invoking double jeopardy, which the trial court granted. Did the trial court err?

A: YES, as there can be separate crimes of physical injuries thru reckless imprudence and tumultuous disturbance caused by the single act of firing a submachine gun. The protection against double jeopardy is only for the same offense. While both Informations have one common element, i.e. defendant having fired a submachine gun, the two Informations do not pertain to the same offense: one charged him with physical injuries inflicted thru reckless imprudence punished under Art. 263 of the RPC and the second accuses him of having deliberately fired the machine gun to cause a disturbance in the festivity or gathering, thereby producing panic among the people present therein, referring to Art. 153. Conviction for the first does not bar trial for the second (*People v. Bacolod, G.R. No. L-2578, July 31, 1951*).

**UNLAWFUL USE OF MEANS OF PUBLICATION
AND UNLAWFUL UTTERANCES
ART. 154**

Punishable Acts

1. Publishing or causing to be published, by means of printing, lithography or any other means of publication, as news any false news which may endanger the public order, or cause damage to the interest or credit of the State;
2. Encouraging disobedience to the law or to the constituted authorities or by praising, justifying or extolling any act punished by law, by the same means or by words, utterances or speeches;
3. Maliciously publishing or causing to be published any official resolution or document without proper authority, or before they have been published officially; or
4. Printing, publishing or distributing books, pamphlets, periodicals, or leaflets which do not bear the real printer's name, or which are classified as anonymous.

NOTE: RA 248 prohibits the reprinting reproduction, republication of government publications and official documents without previous authority.

Necessity of damage to the State

It is not necessary that the publication of the false news actually caused public disorder or caused

damage to the interest or credit of the State, mere possibility to cause danger or damage is sufficient.

ALARMS AND SCANDALS ART. 155

Punishable Acts

1. Discharging any firearm, rocket, firecracker, or other explosive within any town or public place, calculated to cause alarm or danger;

NOTE: The discharge may be in one's home since the law does not distinguish as to where in town. The discharge of firearms and rockets during town fiestas and festivals are not covered by the law when the same is not intended to cause alarm or danger.

2. Instigating or taking an active part in any charivari or other disorderly meeting offensive to another or prejudicial to public tranquility;

NOTE: The term "charivari" includes a medley of discordant voices, a mock of serenade of discordant noises made on kettles, tins, horns, etc., designed to annoy and insult (*Reyes, 2008*).

3. Disturbing the public peace while wandering about at night or while engaged in any other nocturnal amusements; and
4. Causing any disturbance or scandal in public places while intoxicated or otherwise, provided Art. 153 is not applicable.

Note: If the disturbance is of a serious nature, the case will fall under Art. 153 (*Reyes, 2012*).

Essence

The essence of the crime is disturbance of public tranquility and public peace.

Crimes that may possibly arise if a firearm is discharged

1. Alarms and scandals if the offender discharges a firearm in a public place but the firearm is not pointed to a particular person when discharged;
2. Illegal discharge of firearm if the firearm was directed to a particular person who was not hit if intent to kill is not proved;
3. Attempted homicide or murder if the person was hit and there is intent to kill;

4. Physical injuries if the person was hit and injured but there was no intent to kill; or
5. Grave coercion if the threat was directed, immediate and serious and the person is compelled or prevented to do something against his will.

Possible offenses committed by creating noise and annoyance

1. Alarms and scandals if the disturbance affects the public in general (i.e. by playing noisily during the wee hours in the morning in the neighborhood) (**BAR 2013**); or
2. Unjust vexation if the noise is directed to a particular person or a family.

Q: Defendant was indicted before the CFI of Iloilo for discharging a firearm at one Sixto Demaisip. He then moved to dismiss the Information as he claims the filing of Information for discharging of firearm has placed him in peril of double jeopardy as he had previously been charged with the offense of alarm and scandal in a complaint filed in the municipal court of Batad, Iloilo, upon the same facts which constitute the basis of the indictment for discharge of firearm. Is the defendant correct?

A: NO, because for double jeopardy to attach there must be "identity of offenses". It is evident that the offense of discharge of firearm is not the crime of alarm and scandal. Neither may it be asserted that every crime of discharge of firearm produces the offense of alarm and scandal. Although the indictment for alarm and scandal filed under Art.155(1) of the RPC and the information for discharge of firearm instituted under Art. 258 of the same Code are closely related in fact, they are definitely diverse in law. Firstly, the two indictments do not describe the same felony - alarm and scandal is an offense against public order while discharge of firearm is a crime against persons. Secondly, the indispensable element of the former crime is the discharge of a firearm calculated to cause alarm or danger to the public, while the gravamen of the latter is the discharge of a firearm against or at a certain person, without intent to kill (*People v. Doriquez, G.R. Nos. L-24444-45, July 29, 1968*).

DELIVERING PRISONERS FROM JAIL ART. 156

Elements



1. There is a person confined in a jail or penal establishment; and
2. That the offender removes therefrom such person, or helps the escape of such person.
(BAR 2014, 2015)

Art. 156 applies even if the prisoner is in a hospital or an asylum as it is considered an extension of the penal institution (*Reyes, 2008*).

Commission of the crime (BAR 2004, 2009)

Delivering prisoners from jail may be committed in two ways:

1. By removing a person confined in any jail or penal establishment – to take away a person from the place of his confinement, with or without the active cooperation of the person released.
2. By helping such a person to escape – to furnish that person with the material means such as a file, ladder, rope, etc. which greatly facilitate his escape (*Alberto v. Dela Cruz, G.R. No. L-31839, June 30, 1980*).

Necessity that the person confined needs to be a prisoner by final judgment

It is not necessary that the person confined be a prisoner by final judgment. He may also be a mere detention prisoner.

Persons liable

1. Usually, an outsider to the jail
2. It may also be:
 - a. An employee of the penal establishment who does not have the custody of the prisoner; or
 - b. A prisoner who helps the escape of another prisoner.

NOTEL: If the offender is a person who has custody over the person of the prisoner, the crimes that may be committed are:

- a. conniving with or consenting to evasion (Art. 223)- if the public officer consents to evasion.
- b. Evasion thru negligence (Art. 224)- if the evasion of prisoner shall have taken place through negligence of the officer.

Means employed by the offender

The offender may use violence, intimidation or bribery, in which case the penalty shall be higher. He may also use other means to remove the

prisoner from jail or help in the escape of such prisoner.

Qualifying circumstance of bribery

It refers to the offender's act of employing bribery as a means of removing or delivering the prisoner from jail, and not the offender's act of receiving or agreeing to receive a bribe as a consideration for committing the offense.

Mitigating circumstance

If the escape of the prisoner takes place outside of said establishments by taking the guards by surprise, the penalty is the minimum of that prescribed (*par. 2, Art. 156, RPC*).

Q: A, a detention prisoner, was taken to a hospital for emergency medical treatment. His followers, all of whom were armed, went to the hospital to take him away or help him escape. The prison guards, seeing that they were outnumbered and that resistance would endanger the lives of other patients, deckled to allow the prisoner to be taken by his followers. What crime, if any, was committed by A's followers? Why? (BAR 2002)

A: They are liable for delivering prisoner from jail under Art. 156 of the RPC. The crime is not only committed by removing the prisoner from an establishment that the prisoner is confined in but also by helping said person to escape "by other means," such as by allowing the prisoner to be taken by those unauthorized to do so, such as in the case at bar.

Liability of the prisoner or detainee who escaped

1. If a detention prisoner, he does not incur liability from escaping
2. If a convict by final judgment, he will be liable for evasion of service of his sentence

Delivering the prisoners in jail vis-à-vis infidelity in the custody of prisoners

DELIVERING PRISONERS FROM JAIL	INFIDELITY IN THE CUSTODY OF PRISONERS
The offender is not the custodian of the	The offender is the custodian at the time of

prisoner at the time of the escape/removal.	the escape/removal.
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In both, the offender may be a public officer or a private citizen. In both crimes, the person involved may be a convict or a mere detention prisoner.

Note: If the offender is a public officer who had the prisoner in his custody or charge, he is liable for infidelity in the custody of a prisoner (Art. 223).

Applicability of PD 1829 (Obstruction of Justice)

PD 1829 is absorbed in the crime of delivery of prisoners from jail or infidelity in the custody of prisoners.

EVASION BY ESCAPING DURING TERM OF SENTENCE ART. 157

Elements

1. Offender is a convict by final judgment;
2. He is serving his sentence which consists in deprivation of liberty; and
3. He evades the service of his sentence by escaping during the term of his sentence **(BAR 2009)**.

"Final judgment"

The term "final judgment" employed in the RPC means judgment beyond recall. As long as a judgment has not become executory, it cannot be truthfully said that defendant is definitely guilty of the felony charged against him (*People v. Bayotas*, G.R. No. 102007, September 2, 1994). Under Sec. 7 of Rule 16 of the Rules of Court, a judgment in a criminal case becomes final after the lapse of the period for perfecting an appeal or when the sentence has been partially or totally satisfied or served, or the defendant has expressly waived in writing his right to appeal (*Reyes, 2008*).

Liability if the one who escaped is only a detention prisoner

He does not incur liability from escaping. However, if such prisoner knows of the plot to remove him from jail and cooperates therein by escaping, he himself becomes liable for delivering prisoners from jail as a principal by indispensable cooperation.

Q: On appeal, defendant-appellant questions the judgment rendered by the CFI of Manila finding him guilty of evasion of service of sentence under Art. 157. Defendant maintains that Art. 157 apply only in cases of imprisonment and not when the sentence imposed upon was "destierro," as in his case. Is the defendant correct?

A: NO, the defendant is not correct. Art. 157 must be understood to include not only deprivation of liberty by imprisonment but also by sentence of destierro. In the case of *People v. Samonte*, the Supreme Court held that "a person under sentence of destierro is suffering deprivation of his liberty." And a person sentenced to suffer such penalty evades his service of sentence when he enters the prohibited area specified in the judgment of conviction (*People v. Abilong*, G.R. No. L-1960, November 26, 1948).

"Escape" for purposes pplying Art. 157

"Escape" in legal parlance and for purposes of Article 157 of the RPC means unlawful departure of prisoner from the limits of his custody. Clearly, one who has not been committed and never brought to prison cannot be said to have escaped therefrom (*Del Castillo v. Torrecampo*, G.R. No. 139033, December 18, 2002).

Q: Petitioner Adelaida Tanega failed to appear on the day of the execution of her sentence. On the same day, respondent judge issued a warrant for her arrest. She was never arrested. More than a year later, petitioner through counsel moved to quash the warrant of arrest, on the ground that the penalty had prescribed. Petitioner claimed that she was convicted for a light offense and since light offenses prescribe in one year, her penalty had already prescribed. Is the motion meritorious?

A: NO, the penalty has not prescribed as she did not evade her service of sentence. Under Art. 93 of the Revised Penal Code, the prescription of penalties "shall commence to run from the date when the culprit should evade the service of his sentence." To come within the application of Art. 157, the culprit must evade one's service of sentence by escaping during the term of his sentence. This must be so for by the express terms of the statute, a convict evades "service of his sentence" by "escaping during the term of his imprisonment by reason of final judgment." Indeed, evasion of sentence is but another expression of the term "jail breaking" (*Tanega v. Masakayan*, G.R. No. 141718, January 21, 2005).



Qualifying circumstances

If such evasion takes place by:

1. Means of unlawful entry (must be read as “scaling/ climbing walls”);
2. Breaking doors, windows, gates, walls, roofs or floors;
3. Using picklocks, false keys, disguise, deceit, violence or intimidation; or
4. Conniving with other convicts or employees of the penal institution.

Q: Manny killed his wife under exceptional circumstances and was sentenced by the RTC of Dagupan City to suffer the penalty of destierro during which he was not to enter the city. While serving sentence, Manny went to Dagupan City to visit his mother. Later, he was arrested in Manila.

- a. Did Manny commit any crime?
- b. Where should Manny be prosecuted? (BAR 1998)

A:

- a. Yes. Manny committed the crime of evasion of service of sentence when he went to Dagupan City, which he was prohibited from entering under his sentence of *destierro*. A sentence imposing the penalty of *destierro* is evaded when the convict enters any of the place/places he is prohibited from entering under the sentence or come within the prohibited radius. Although *destierro* does not involve imprisonment, it is nonetheless a deprivation of liberty (*People v. Abilong*. 82 Phil. 172).
- b. Manny may be prosecuted in Manila or Dagupan City. In the case of *Parulan v. Director of Prisons* (G.R. No. L-28519, February 17, 1968), the Court held that the crime of evasion of sentence under Article 157 of the Revised Penal Code is a continuing crime. Hence, the accused may be prosecuted by the court of either province where any of the essential ingredients of the crime took place.

**EVASION ON THE OCCASION OF DISORDERS
ART. 158**

Elements

1. Offender is a convict by final judgment who is confined in a penal institution;
2. There is disorder, which results from:
 - a. Conflagration
 - b. Earthquake

- c. Explosion
 - d. Other similar catastrophe, or
 - e. Mutiny in which he has not participated;
3. Offender evades the service of his sentence by leaving the penal institution where he is confined on the occasion of such disorder or during the mutiny; and
4. Offender fails to give himself up to the authorities within forty-eight (48) hours following the issuance of a proclamation by the Chief Executive announcing the passing away of such calamity.

Basis of liability

Liability is based on the failure to return within 48 hours after the passing of the calamity, conflagration or mutiny had been announced and not the act of leaving from the penal establishment.

“Mutiny” as referred under this article

The mutiny referred here involves subordinate personnel rising against the supervisor within the penal establishment. It is one of the causes which may authorize a convict serving sentence in the penitentiary to leave the jail provided he has not taken part in the mutiny. If one partakes in mutiny, he will be liable for the offenses which he committed during the mutiny whether or not he returns (*People v. Padilla*, G. R. No. 121917, March 12, 1997).

NOTE: The penalty of commission of this felony is an increase by 1/5 of the time remaining to be served under the original sentence, in no case to exceed 6 months.

The special allowance for loyalty (e.g. deduction of sentence) authorized by Art. 98 and 158(2) refers to those convicts, who having evaded the service of their sentences by leaving the penal institution, give themselves up within 48 hours following the issuance of the proclamation by the President announcing the passing away of the calamity or catastrophe. They will be entitled to a deduction of one-fifth (1/5) of their respective sentences.

A deduction of two-fifths (2/5) of the period of his sentence shall be granted in case said prisoner chose to stay in the place of his confinement notwithstanding the existence of a calamity or catastrophe enumerated under Art. 158 (*Art. 98 as amended by RA 10592*).

**EVASION BY VIOLATION OF CONDITIONAL
PARDON
ART. 159**

Elements

1. Offender was a convict;
2. That he was granted a conditional pardon by the Chief Executive; and
3. He violated any of the conditions of such pardon.

A convict granted conditional pardon who is recommitted must be convicted by final judgment of a court of the subsequent crime or crimes with which he was charged before *the criminal penalty for such subsequent offense(s)* can be imposed upon him. Since Article 159 of the Revised Penal Code defines a distinct, substantive, felony, the parolee or convict who is regarded as having violated the provisions thereof must be charged, prosecuted and convicted by final judgment before he can be made to suffer the penalty prescribed in Article 159 (*Torres v. Gonzales, G.R. No. 76872, July 23, 1987*).

Granting of pardon before a judgment becomes final

As mandated by Sec. 19, Article VII of the 1987 Constitution, no pardon may be extended before a judgment of conviction becomes final. A judgment of conviction becomes final (a) when no appeal is seasonably perfected, (b) when the accused commences to serve the sentence, (c) when the right to appeal is expressly waived in writing, except where the death penalty was imposed by the trial court, and (d) when the accused applies for probation, thereby waiving his right to appeal. Where the judgment of conviction is still pending appeal and has not yet therefore attained finality, executive clemency may not yet be granted by the President (*People v. Salle, Jr. G.R. No. 103567, December 4, 1995*).

Basis of the power of the President to grant pardon

The pardoning power of the President is provided for in Article VII as follows: "Except in cases of impeachment, or as otherwise provided in this Constitution, the President may grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction by final judgment" (Sec. 19, Art. VII of the 1987 Constitution)."

As provided further in Sec. 64[i] of the Revised Administrative Code, the President has the power

"to grant to convicted persons reprieves or pardons, either plenary or partial, conditional, or unconditional; to suspend sentences without pardon, remit fines, and order the discharge of any convicted person upon parole, subject to such conditions as he may impose; and to authorize the arrest and reincarceration of any such person who, in his judgment, shall fail to comply with the condition, or conditions of his pardon, parole, or suspension of sentence."

Q: While serving his sentence for the crime of abduction after being found guilty thereof by the CFI of Cavite, defendant-appellant was pardoned on February 1923. Subsequently, he was tried for the crime of attempted robbery in band with physical injuries and also charged with a violation of the condition of his pardon with the CFI of Rizal. On appeal, defendant claims that it is the CFI of Cavite that has jurisdiction over the case. Is the defendant correct?

A: NO, because it is the court wherein the crime committed, subsequent to the pardon, which has jurisdiction to determine whether the defendant has violated the conditions of the pardon. The proceeding under Article 159 of the Revised Penal Code is not a continuation or a part of the proceeding of the crime previous to the grant of pardon. It is a new proceeding, complete in itself and independent of the latter. It refers to other subsequent facts which the law punishes as a distinct crime the penalty for which is not necessarily that remitted by the pardon (*People v. Martin, G.R. No. L-46432, May 17, 1939*).

NOTE: The condition imposed upon the prisoner that he should not commit another crime, extends to offenses punished by special laws, like illegal voting under the Election Law (*Reyes, 2008*).

Q: After serving 2 years, 5 months and 22 days of the total duration of his sentence of *prision mayor*, a conditional pardon was granted to the appellant remitting 3 years, 7 months, and 8 days. Subsequently, appellant was found guilty of the crime of *estafa*. By reason thereof, he was prosecuted under Art. 159 to which he pled guilty. The court then ordered his recommitment for the term remitted by the pardon. The accused appealed from this judgment. Is the appeal meritorious?

A: YES. By express provision of Art. 159 of the RPC, the prescribed penalty is *prision correccional* in its minimum period. The second part of said Article,



which provides that the convict shall suffer the unexpired portion of his original sentence should the penalty or term remitted be higher than six years, is clearly inapplicable in this case as the term remitted by the pardon is 3 years, 7 months, and 8 days (*People v. Sanares*, G.R. No. L-43499, January 11, 1936).

Conditional pardon vis-à-vis Evasion of service of sentence

VIOLATION OF CONDITIONAL PARDON	EVASION OF SERVICE OF SENTENCE
It is not a public offense for it does not cause harm or injury to the right of another person nor does it disturb public order.	It is a public offense separate and independent from any other act.

**QUASI-RECIDIVISM
ART. 160**

Elements (BAR 1991)

1. Offender was already convicted by final judgment of one offense; and
2. That he committed a new felony before beginning to serve such sentence or while serving the same.

Note: Under this provision, any person who shall commit a felony after having been convicted by final judgment, before beginning to serve such sentence, or while serving the same, shall be punished by the maximum period of the penalty prescribed by law for the new felony. This circumstance has been interpreted by the Court as a special aggravating circumstance where the penalty actually imposed is taken from the prescribed penalty in its maximum period without regard to any generic mitigating circumstances (*People v. Temporada*, G.R. No. 173473, December 17, 2008).

Q: The CFI of Rizal found the defendants guilty of the crime of murder and imposed upon them the penalty of death by reason of the existence of special aggravating circumstance of quasi-recidivism. On automatic review by the Supreme Court, the counsel of the defendants contends that the allegation of quasi-recidivism in the Information is ambiguous, as it fails to state whether the

offenses for which the defendants were serving sentence at the time of the commission of the crime charged were penalized by the RPC, or by a special law. Is the argument of the counsel correct?

A: **NO**, it makes no difference, for purposes of the effect quasi-recidivism, under Art. 160 of the Revised Penal Code, whether the crime for which an accused is serving sentence at the time of the commission of the offense charged, falls under said Code or under a special law (*People v. Peralta, et al.*, G.R. No. L-15959, October 11, 1961). It is only the subsequent crime committed which is required to be a felony under the RPC.

Q: Defendant-appellant, while serving sentence for the crime of homicide, killed one Sabas Aseo, for which the CFI of Manila found him guilty with the crime of murder, meting him the penalty of death. On appeal to the Supreme Court, appellant contend that the CFI erred in applying Article 160 of the RPC as it is applicable only when the new crime which is committed by a person already serving sentence is different from the crime for which he is serving sentence. Is the defendant correct?

A: **NO**. The new offense need not be different or be of different character from that of the former offense. The deduction of the appellant from the head note of Art. 160 of the word “another” is not called for. The language is plain and ambiguous. There is not the slightest intimation in the text of article 160 that said article applies only in cases where the new offense is different in character from the former offense for which the defendant is serving the penalty. Hence, even if he is serving sentence for homicide and was later found to be guilty of murder, Article 160 applies (*People v. Yabut*, G.R. No. 39085, September 27, 1933).

Note: The second crime must be a felony, punishable under RPC. But the first crime for which the offender is serving sentence may either be punishable under RPC or special law.

CRIMES AGAINST PUBLIC INTEREST

Acts of Counterfeiting

1. Forging the seal of the Government, signature or stamp of the Chief Executive (*Art. 161, RPC*);
2. Using forged signature, seal or stamp (*Art. 162, RPC*);
3. Counterfeiting coins (*Art. 163, RPC*);
4. Mutilation of coins (*Art. 164, RPC*); and
5. Forging treasury or bank notes or other documents payable to bearer (*Art. 166, RPC*).

Acts of Forgery

1. Illegal Possession and Use of False Treasury or Bank Notes and Other Instruments of Credit (*Art. 168, RPC*); and
2. How Forgery is Committed (*Art. 169, RPC*).

Acts of Falsification

1. Falsification of legislative documents (*Art. 170, RPC*);
2. Falsification by public officer, employee or notary ecclesiastical minister (*Art. 171, RPC*);
3. Falsification by private individuals (*Art. 172, RPC*);
4. Falsification of wireless, cable, telegraph and telephone messages (*Art. 173, RPC*);
5. Falsification of medical certificates, certificates of merit or service (*Art. 174, RPC*);
6. Using False Certificates (*Art. 175, RPC*); and
7. Manufacturing and Possession of Instruments or Implements for Falsification (*Art. 176, RPC*).

Other Falsities

1. Usurpation of Authority or Official Functions (*Art. 177, RPC*);
2. Using Fictitious and Concealing True Name (*Art. 178, RPC*);
3. Illegal Use of Uniforms and Insignia (*Art. 179, RPC*);
4. False Testimony Against a Defendant (*Art. 180, RPC*);
5. False Testimony Favorable to the Defendant (*Art. 181, RPC*);
6. False Testimony in Civil Cases (*Art. 182, RPC*);
7. False Testimony in Other Cases and Perjury in Solemn Affirmation (*Art. 183, RPC*);
8. Offering False Testimony in Evidence (*Art. 184, RPC*);
9. Machinations in Public Auctions (*Art. 185, RPC*);

10. Monopolies and Combinations in Restraint of Trade (*Art. 186, RPC*); and
11. Importation and Disposition of Falsely Marked Articles or Merchandise Made of Gold, Silver, or other Precious Metals or their Alloys (*Art. 187, RPC*).

FORGERIES

Crimes called forgeries

They are:

1. Forging the seal of the Government, signature or stamp of the Chief Executive (*Art. 161, RPC*);
2. Counterfeiting coins (*Art. 163, RPC*);
3. Mutilation of coins (*Art. 164, RPC*);
4. Forging treasury or bank notes or other documents payable to bearer (*Art. 166, RPC*);
5. Counterfeiting instruments not payable to bearer (*Art. 167, RPC*);
6. Falsification of legislative documents (*Art. 170, RPC*);
8. Falsification by public officer, employee or notary ecclesiastical minister (*Art. 171, RPC*);
9. Falsification by private individuals (*Art. 172, RPC*);
10. Falsification of wireless, cable, telegraph and telephone messages (*Art. 173, RPC*); and
11. Falsification of medical certificates, certificates of merit or service (*Art. 174, RPC*) (Reyes, 2017).

**COUNTERFEITING THE GREAT SEAL OF THE
GOVERNMENT OF THE PHILIPPINE ISLANDS,
FORGING THE SIGNATURE OR STAMP
OF THE CHIEF EXECUTIVE
ART. 161**

Punishable Acts

1. Forging the Great Seal of the Government of the Philippines;
2. Forging the signature of the President; and
3. Forging the stamp of the President.

When in a Government document the signature of the President is forged, it is not called falsification. Article 161 supplied the specific provision to govern the case. The name of the crime is forging the signature of the Chief Executive

NOTE: If the signature of the president is forged, the crime committed is covered by this provision and not falsification of public document.



**USING FORGED SIGNATURE, SEAL OR STAMP
ART. 162**

Elements

1. That the Great Seal of the Republic was counterfeited or the signature or stamp of the Chief Executive was forged by another person;

Note: The offender should not be the one who forged the great seal or signature of the Chief Executive. Otherwise, he will be penalized under Article 161.

2. That the offender knew of the counterfeiting or forgery; and

NOTE: The offender is not the forger or the cause of the counterfeiting. If the offender is the forger, the crime committed is forgery under Art. 161.

3. That he used counterfeit seal or forged signature or stamp.

NOTE: In using forged signature or stamp of the President, or forged seal, the participation of the offender is in effect that of an accessory, and although the general rule is that he should be punished by a penalty of two degrees lower, under this article he is punished by a penalty only one degree lower.

**MAKING, IMPORTING AND UTTERING FALSE
COINS
ART. 163**

Elements

1. That there be false or counterfeited coins;
2. That the offender either made, imported or uttered such coins; and
3. That in case of uttering such false or counterfeited coins, he connived with the counterfeiters or importers.

Coin

Coin is a piece of metal stamped with certain marks and made current at a certain value.

Acts of falsification or falsity

1. *Counterfeiting* – refers to money or currency;
2. *Forgery* – refers to instruments of credit and obligations and securities issued by the Philippine government or any banking

institution authorized by the Philippine government to issue the same; and

3. *Falsification* – can only be committed in respect of documents.

Counterfeiting

Counterfeiting means the imitation of a legal or genuine coin such as to deceive an ordinary person in believing it to be genuine.

A coin is false or counterfeited if it is forged or if it is not authorized by the Government as legal tender, regardless of its intrinsic value.

Criterion used in determining whether a coin is a counterfeit or not

The criterion is that the imitation must be such as to deceive an ordinary person in believing it to be genuine. Consequently, if the imitation is so imperfect that no one was deceived, the felony cannot be consummated.

There must be an imitation of peculiar design of a genuine coin (*U.S. v. Basco, G.R. No. 2747, April 14, 1906*).

NOTE: Former coins which have been withdrawn from circulation can be counterfeited. This article mentions “coin” without any qualifying words such as “current.”

Kinds of coins the counterfeiting which is punished

1. Silver coin of the Philippines or coins of the Central Bank of the Philippines.
2. Coins of the minor coinage of the Philippines or of the Central Bank of the Philippines.
3. Coins of the currency of a foreign country.

Q: A person gave a copper cent the appearance of a silver piece, it being silver plated, and attempted to pay with it a package of cigarettes which he bought at a store. What crime, if any, was committed?

A: Such person is *not* liable for counterfeiting of coin, but for *estafa* under Art. 318 (*Reyes, 2008*).

“Utter”

Utter means to pass counterfeited coins, deliver or give away.

“Import”

Import means to bring them to port.

**MUTILATION OF COINS, IMPORTATION AND
UTTERANCE OF MUTILATED COINS
ART. 164**

Punishable Acts

1. Mutilating coins of the legal currency, with the further requirement that there be intent to damage or to defraud another; and
2. Importing or uttering such mutilated coins, with the further requirement that there must be connivance with the mutilator or importer in case of uttering.

Mutilation

Mutilation means to take off part of the metal either by filling it or substituting it for another metal of inferior quality.

Requisites

1. Coin mutilated is of legal tender; and

NOTE: This is the only article that requires that the mutilated coin be legal tender.

2. Offender gains from the precious metal dust abstracted from the coin.

Counterfeiting of coins vis-à-vis Mutilating coins

COUNTERFEITING COINS	MUTILATING COINS
<ol style="list-style-type: none"> 1. May be of legal tender or old coin. 2. Act of imitating. 	<ol style="list-style-type: none"> 1. Must be legal tender. 2. Act of scratching the metal content.

Mutilation of paper bills under PD 247

There can be no mutilation of paper bills under Art. 164 but in PD 247 which punishes the act of destruction of money issued by Central Bank of the Philippines, mutilation is not limited to coins.

Acts punishable under PD 247

1. Willful defacement;
2. Mutilation;
3. Tearing;
4. Burning; and
5. Destruction of Central Bank Notes and coin.

Note: One who mutilates a coin does not do so for the sake of mutilating, but to take advantage of the metal abstracted; he appropriates a part of the metal of the coin. Hence, the coin diminishes in intrinsic value. One who utters said mutilated coin receives its legal value, much more than its intrinsic value.

**SELLING OF FALSE OR MUTILATED COIN,
WITHOUT CONNIVANCE
ART. 165**

Punishable Acts

1. Possession of coin, counterfeited or mutilated by another person, with intent to utter the same, knowing that it is false or mutilated.

Elements:

- a. Possession (includes constructive possession);
- b. With intent to utter; and
- c. Knowledge that such coin is mutilated.

NOTE: Possession of or uttering false coin does not require that the counterfeiting coin is legal tender. The possessor should not be the counterfeiter, mutilator, or importer of the coins.

2. Actually uttering such false or mutilated coin, knowing the same to be false or mutilated.

Elements:

- a. Actually uttering a false or mutilated coin; and
- b. Knowledge that such coin is false or mutilated.

Note: The offense punished under this article is the mere holding of the false or mutilated coin with intent to utter.

Q: A Chinese merchant was paid by a purchaser of goods in the former's store with a false 50-centavo coin. He placed it in his drawer. During a search by some constabulary officers, the false coin was found in the drawer. May the Chinaman be convicted of illegal possession of false coin?

A: NO, because Art. 165 requires three things as regards possession of false coins, namely: (1) possession; (2) intent to utter; and (3) knowledge that the coin is false. The fact that the Chinaman

received it in payment of his good and place it in his drawer shows that he did not know that such



coin was false (*People v. Go Po*, G.R. No. 42697, August 1, 1985).

NOTE: As long as the offender has knowledge that the coin is false or mutilated, there is no need for him to connive with the counterfeiter or mutilator.

**FORGING TREASURY OR BANK NOTES OR
OTHER DOCUMENTS PAYABLE TO BEARER;
IMPORTING, AND UTTERING SUCH FALSE OR
FORGED NOTES AND DOCUMENTS;
IMPORTING, AND UTTERING SUCH FALSE OR
FORGED NOTES AND DOCUMENTS
ART. 166**

Acts Punished

1. Forging or falsification of treasury or bank notes or other documents payable to bearer;
2. Importation of such false or forged obligations or notes; and
3. Uttering of such false or forged obligations or notes in connivance with the forgers or importers.

Forging is committed by giving to a treasury or bank note or any instrument payable to bearer or to order the appearance of a true and genuine document.

Importation of false or forged obligations or notes

Importation of false or forged obligation or notes means to bring them into the Philippines, which presupposes that the obligation or notes are forged or falsified in a foreign country.

Uttering false or forged obligations or notes

It means offering obligations or notes knowing them to be false or forged, whether such offer is accepted or not, with a representation, by words or actions, that they are genuine and with an intent to defraud.

Notes and other obligations and securities that may be forged or falsified

1. Treasury or bank notes;
2. Certificates; and
3. Other obligations and securities, payable to bearer.

Kinds of treasury or bank notes or other documents that may be forged

1. Obligation or security issued by the Government of the Philippines;
2. Circulating note issued by any banking institution duly authorized by law to issue the same;
3. Document issued by a foreign government; and
4. Circulating note or bill issued by a foreign bank duly authorized to issue the same.

NOTE: The falsification of PNB checks is not forgery under Art. 166, but falsification of commercial document under Art.172 in connection with Art.171.

Forgery vis-à-vis Falsification

FORGERY	FALSIFICATION
Committed by giving to a treasury or bank note or any instrument payable to the bearer or to order the appearance of true and genuine document.	Committed by erasing, substituting, counterfeiting, or altering by any means, the figures, letters, words, or signs contained therein.

**COUNTERFEITING, IMPORTING AND UTTERING
INSTRUMENTS NOT PAYABLE TO BEARER
ART. 167**

Elements

1. That there be an instrument payable to order or other document of credit not payable to bearer;
2. That the offender either forged, imported or uttered such instrument; and
3. That in case of uttering, he connived with the forger or importer.

Acts of forgery punished under Art. 167

1. **Forging** instruments payable to order or documents of credit not payable to bearer;
2. **Importing** such false instruments; and
3. **Uttering** such false instruments in connivance with the forger or the importer.

NOTE: Connivance is not required in uttering if the utterer is the forger.

Inclusion of instruments or other documents of credit issued by a foreign government

This article covers instruments or other documents of credit issued by a foreign

government or bank because the act punished includes that of importing, without specifying the country or government issuing them.

Reason for punishing forgery

Forgery of currency is punished so as to maintain the integrity of the currency and thus insure the credit standing of the government and prevent the imposition on the public and the government of worthless notes or obligations.

Note: The counterfeiting under Article 167 must involve an instrument payable *to order* or other document of credit *not* payable to bearer

ILLEGAL POSSESSION AND USE OF FALSE TREASURY OR BANK NOTES AND OTHER INSTRUMENTS OF CREDIT ART. 168

Elements (BAR 1999)

1. That any treasury or bank note or certificate or other obligation and security payable to bearer, or any instrument payable to order or other document of credit not payable to bearer is forged or falsified by another person;
2. That the offender knows that any of the said instruments is forged or falsified; and
3. That he either used or *possessed with intent to use* any of such forged or falsified instruments.

Q: Is mere possession of false bank notes enough to consummate the crime under Art. 168 of RPC which is the illegal possession and use of false treasury or bank notes and other instruments of credit?

A: NO. As held in *People v. Digoro*, possession of false treasury or bank notes alone, without anything more, is not a criminal offense. For it to constitute an offense under Article 168 of the RPC, the possession must *be with intent to use* said false treasury or bank notes (*Clement v. People*, G.R. No. 194367, June 15, 2011).

NOTE: But a person in possession of falsified document and who makes use of the same is presumed to be the material author of falsification.

HOW FORGERY IS COMMITTED ART. 169

Forgery

Forgery is committed **(BAR 1999, 2008):**

1. By giving to a treasury or bank note or any instrument payable to bearer or to order mentioned therein, the appearance of a true and genuine document; or
2. By erasing, substituting, counterfeiting, or altering by any means the figures, letters, words, or sign contained therein.

Essence of Forgery

The essence of forgery is giving a document the appearance of a true and genuine document.

Note: With the definition given in this article, the crime of counterfeiting or forging treasury or bank notes or other documents payable to bearer or to order includes (1) acts of counterfeiting or forging said documents, and (2) acts of falsification.

Q: A received a treasury warrant, a check issued by the Government. It was originally made payable to B, or his order. A wrote B's name on the back of said treasury warrant as if B had indorsed it, and then presented it for payment. It was paid to A. Was there forgery?

A: YES, because when A wrote B's name on the back of the treasury warrant which was originally made payable to B or his order, he converted, by such supposed indorsement, the treasury warrant to one payable to bearer. It had the effect of erasing the phrase "or his order" upon the face of the warrant. There was material alteration on a genuine document (*US v. Solito*, G.R. No. L-12546, August 25, 1917).

When counterfeiting is not forgery

The subject of forgery should be treasury or bank notes. If the subject of forgery were a document other than these, the crime would be falsification (*Boado*, 2008).

NOTE: Not any alteration of a letter, number, figure or design would amount to forgery. At most, it would only be frustrated forgery.

FALSIFICATION OF LEGISLATIVE, PUBLIC, COMMERCIAL, AND PRIVATE DOCUMENTS AND WIRELESS TELEGRAPH, AND TELEPHONE MESSAGES ART. 169



Document

It is any written instrument by which a right is established or an obligation is extinguished, or every deed or instrument executed by a person by which some disposition or agreement is proved, evidenced or set forth.

Kinds of documents

1. **Public document**– any instrument notarized by a notary public or competent public official with the solemnities required by law.

Example:

- a. Civil service examination papers
- b. Official receipt required by the government to be issued upon receipt of money for public purposes
- c. Residence certificate
- d. Driver's license

2. **Official document**– any instrument issued by the government or its agents or officers having authority to do so and the offices, which in accordance with their creation, they are authorized to issue.

Example: Register of attorneys officially kept by the Clerk of the Supreme Court in which it is inscribed the name of each attorney admitted to the practice of law.

NOTE: Public document is broader than the term official document. Before a document may be considered official, it must first be public document. To become an official document, there must be a law which requires a public officer to issue or to render such document.

3. **Private document**– every deed or instrument by a private person without the intervention of the notary public or of any other person legally authorized, by which document some disposition or agreement is proved, evidenced or set forth.

4. **Commercial document**– any instrument executed in accordance with the Code of Commerce of any mercantile law containing disposition of commercial rights or obligations.

Example:

- a. Bills of exchange
- b. Letters of Credit

- c. Checks
- d. Quedans
- e. Drafts
- f. Bills of lading

Classes of falsification

1. Falsification of legislative documents;
2. Falsification of a document by a public officer, employee or notary public;
3. Falsification of public or official, or commercial documents by a private individual;
4. Falsification of private document by any person; and
5. Falsification of wireless, telegraph and telephone messages.

A document is falsified by fabricating an inexistent document or by changing the contents of an existing one through any of the 8 ways enumerated under Art. 171.

**FALSIFICATION OF LEGISLATIVE DOCUMENTS
ART. 170**

Elements

1. That there be a bill, resolution or ordinance enacted or approved or pending approval by either House of Legislature or any provincial board or municipal council;
2. That the offender alters the same;
3. That he has no proper authority therefor; and
4. That the alteration has changed the meaning of the document.

NOTE: The act of falsification in legislative document is limited to altering it which changes its meaning.

Persons liable under this article

The offender is any person who has no proper authority to make the alteration. He may be a private individual or a public officer.

Article 170 does not require that the offender be a private individual. All that the provision requires is that the offender has *no proper authority* to make the alteration. Hence, the offender may be a private individual or a public officer.

**FALSIFICATION BY PUBLIC OFFICER,
EMPLOYEE OR NOTARY OR ECCLESIASTICAL
MINISTER
ART. 171
(BAR 2015)**

Elements

1. That the offender is a public officer, employee, or notary public;
2. That he takes advantage of his official position:
 - a. He has the duty to make or prepare or to otherwise intervene in the preparation of the document; or
 - b. He has the official custody of the document which he falsifies; and
3. That he falsifies a document by committing any of the following acts **(BAR 2008)**:
 - a. Counterfeiting or imitating any handwriting, signature, or rubric.

Elements:

- i. That there be an intent to imitate, or an attempt to imitate; and
- ii. That the two signatures or handwritings, the genuine and the forged bear some resemblance to each other.

NOTE: The Spanish text of Art. 171 is "*fingiendo*" or feigning (for imitation). In feigning, there is no original signature, handwriting or rubric, but a forgery of a signature, handwriting or rubric that does not exist.

- b. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate.

Elements:

- i. That the offender caused it to appear in a document that a person or persons participated in an act or a proceeding; and
- ii. That such person or persons did not in fact so participate in the act or proceeding.
- c. Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them.

Elements:

- i. That a person or persons participated in an act or a proceeding;

- ii. That such person or persons made statements in that act or proceeding; and
- iii. That the offender, in making a document, attributed to such person or persons statements other than those in fact made by such person or persons.
- d. Making untruthful statements in a narration of facts.

Elements:

- i. That the offender makes in a document untruthful statements in a narration of facts;
- ii. That he has legal obligation to disclose the truth of the facts narrated by him;

NOTE: There is a law requiring the disclosure of truth of the facts narrated (*Reyes, 2017*).

- iii. The facts narrated by the offender are absolutely false; and

NOTE: The perversion of truth in the narration of facts must be made with the wrongful intent of injuring a third person (*Reyes, 2017*).

- iv. The untruthful narration must be such as to affect the integrity of the document or to change the effects which it would otherwise produce.
- e. Altering true dates.

There is falsification under this paragraph only when the date mentioned in the document is essential. The alteration of the date in a document must affect either the veracity of the document or the effects thereof.

- f. Making any alteration or intercalation in a genuine document which changes its meaning.

Elements:

- i. That there be an alteration (change) or intercalation (insertion) on a document;
- ii. That it was made on a genuine document;

- iii. That the alteration or intercalation had changed the meaning of the document; and
- iv. That the change made the document speak something false.

The alteration which makes a document speak the truth does not constitute falsification.

- g. Issuing in authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such copy a statement contrary to, or different from, that of the genuine original.

NOTE: The acts of falsification mentioned in this paragraph cannot be committed by a private individual or by a notary public or a public officer who does not take advantage of his official position.

- h. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry or official book.
4. In case the offender is an ecclesiastical minister, the act of falsification is committed with respect to any record or document of such character that its falsification may affect the civil status of persons.

Persons liable under Art. 171

- 1. Public officer, employees, or notary public who takes advantage of official position;
- 2. Ecclesiastical minister if the act of falsification may affect the civil status of persons; or
- 3. Private individual, if in conspiracy with public officer.

Q: X was charged with falsification because in her certificate of candidacy for the position of councilor she had 'willfully and unlawfully' made the false statement that she was eligible to said office although she knew fully well that she was under 23 years old. Was the charge proper?

A: NO. When the accused certified she was eligible for the position, she practically wrote a *conclusion of law*. Hence, she may not be declared guilty of falsification because Art. 171 punishes untruthful statements in *narration of facts* (*People v. Yanza*, G.R. No. L-12089, April 29, 1960).

Making untruthful statements vis-à-vis Perjury

MAKING UNTHRUTHFUL STATEMENTS	PERJURY
The document must not be subscribed and sworn. <i>Ex: cedula; driver's license</i>	The document must be subscribed and sworn to. NOTE: What is violated is the solemnity of the oath.

Q: Augustina filed a criminal complaint against Bernante for falsification of public document because the latter allegedly falsified leave forms. It was alleged that Bernante made it appear in his leave application that he was on forced leave and on vacation leave on certain dates. In truth, Bernante was serving a 20-day prison term because of his conviction of the crime of slight physical injuries. Is Bernante liable for the crime of falsification of documents?

A: NO. Augustina failed to point to any law imposing upon Bernante the legal obligation to disclose where he was going to spend his leave of absence. "Legal obligation" means that there is a law requiring the disclosure of the truth of the facts narrated. Bernante may not be convicted of the crime of falsification of public document by making false statements in a narration of facts absent any legal obligation to disclose where he would spend his vacation leave and forced leave (*Enemecio v. Office of the Ombudsman [Visayas]*, G.R. No. 146731, Jan. 13, 2004).

Q: In falsification of public documents, is it necessary that there be the idea of gain or intent to injure a third person?

A: NO. In falsification of public or official documents, it is not necessary that there be present the idea of gain or the intent to injure a third person because in the falsification of a public document, what is punished is the violation of the public faith and the destruction of the truth as therein solemnly proclaimed (*Galeos v. People*, G.R. Nos. 174730-37, February 9, 2011).

Q: A counterfeited the signature of B but what he entered in the Statement of Assets and Liabilities of B are all true. Since there was no

damage to the government, did he commit a crime?

A: YES. In falsification of a public document, it is immaterial whether or not the contents set forth therein were false. What is important is the fact that the signature of another was counterfeited. In a crime of falsification of a public document, the principal thing punished is the violation of public faith and the destruction of the truth as therein solemnly proclaimed. Thus, intent to gain or injure is immaterial. Even more so, the gain or damage is not necessary (*Caubang v. People, G.R. No. L-62634 June 26, 1992*).

Q: Can falsification be committed by omission?

A: YES.

Illustration: An assistant bookkeeper who, having bought several articles for which he signed several chits, intentionally did not record in his personal account most of the said chits and destroyed them so that he could avoid paying the amount thereof is guilty of falsification by omission (*People v. Dizon, G.R. No. 22560, January 29, 1925*).

**FALSIFICATION BY PRIVATE INDIVIDUALS AND
USE OF FALSIFIED DOCUMENTS
ART. 172**

Punishable Acts

1. Falsification of **public official or commercial document** by a private individual.

Elements (BAR 1991, 1992, 1993, 2000, 2009):

- a. Offender is a private individual or public officer or employee who did not take advantage of his official position;
- b. He committed any act of falsification; and
- c. The falsification is committed in a public, official, or commercial document or letter of exchange.

NOTE: Under this par., damage is not essential. It is presumed.

2. Falsification of **private document** by any person

Elements:

- a. Offender committed any of the acts of falsification except Art. 171 (7), that is, issuing in an authenticated form a document purporting to be a copy of an

original document when no such original exists, or including in such a copy a statement contrary to, or different from that of the genuine original;

- b. Falsification was committed in any private document; and
- c. Falsification caused damage to a third party or at least the falsification was committed with intent to cause such damage.

Mere falsification of private document is not enough, two things are required:

- a. He must have counterfeited the false document.
- b. He must have performed an independent act which operates to the prejudice of a third person.

3. Use of falsified document.

Elements:

- a. In introducing in a judicial proceeding
 - i. Offender knew that the document was falsified by another person
 - ii. The falsified document is in Arts. 171 or 172 (1 or 2)
 - iii. He introduced said document in evidence in a judicial proceeding

NOTE: Damage is **not** necessary in the crime of introducing in judicial proceeding a false document.

- b. In use in any other transaction -
 - i. Offender knew that a document was falsified by another person
 - ii. The false document is embraced in Arts. 171 or 172 (1 or 2)
 - iii. He used such document
 - iv. The use caused damage to another or at least used with intent to cause damage

NOTE: The user of the falsified document is deemed the author of the falsification if: (1) the use was so closely connected in time with the falsification, and (2) the user had the capacity of falsifying the document (**BAR 1997, 1999**).

Good faith is a defense if a private individual falsified a public document

There is no falsification of a public document if the acts of the accused are consistent with good faith. Misstatements or erroneous assertion in a public document will not give rise to falsification as long



as he acted in good faith and no one was prejudiced by the alteration or error.

Document need not be an authentic official paper

It states that “causing it to appear that persons have participated in any act or proceeding when they did not in fact participate,” the document need not be an authentic official paper since its simulation is the essence of falsification. So, also, the signatures appearing thereon need not necessarily be forged.

Q: When is damage required under this Article?

A:

1. When a private document is falsified.
2. When a falsified document is used in any proceeding other than judicial.

Q: Is there a complex crime of *estafa* through falsification of a private document?

A: NONE. The fraudulent gain obtained through deceit in *estafa*, in the commission of which a private document was falsified is nothing more or less than the very damage caused by the falsification of such document. The proper crime to be charged is *estafa*, if *estafa* can be committed without falsification, such as when a private document is falsified to conceal the misappropriation of money in possession of the offender, or when *estafa* was already consummated. If *estafa* cannot be committed without falsification, then the crime is falsification such as when the private document is falsified to obtain the money which was later misappropriated.

Q: Orient Commercial Banking Corporation (OCBC), a commercial bank was ordered closed by the BSP. PDIC was designated as OCBC receiver. Based on their investigation, it appears that fictitious loans in favor of two entities – Timmy’s, Inc. and Asia Textile Mills, Inc. were approved, after which two manager’s checks representing the supposed proceeds of these loans were issued but made payable to two different entities without any documents issued by the supposed borrowers assigning the supposed loan proceeds to the two payees. Thereafter, these two manager’s checks were encashed, and then deposited in the OCBC Savings Account of Jose Go. PDIC as receiver sent demand letters to the bank’s debtor-borrowers on record, including

Timmy’s, Inc. and Asia Textile Mills, Inc. however, it was discovered that the signatures of the corporate officers were forgeries, and the purported loans were obtained through falsified loan documents.

A: Respondents Go, et. al., are liable for the crime of *Estafa* thru Falsification of Commercial Documents. In a prosecution for *estafa*, demand is not necessary where there is evidence of misappropriation or conversion. The accused may be convicted of the felony under Article 315, paragraph 1(b) of the Revised Penal Code if the prosecution proved misappropriation or conversion by the accused of the money or property subject of the information. Moreover, the falsification of a public, official, or commercial document may be a means of committing *estafa*, because before the falsified document is actually utilized to defraud another, the crime of falsification has already been consummated, damage or intent to cause damage not being an element of the crime of falsification of public, official or commercial document. Therefore, the falsification of the public, official or commercial document is only a necessary means to commit the *estafa*. (*People of the Philippines v. Jose Go, et. al*)

Falsification of public document vis-à-vis private document

BASIS	FALSIFICATION OF PUBLIC DOCUMENT (BAR 2013)	FALSIFICATION OF PRIVATE DOCUMENT
<i>As to intent</i>	Mere falsification is enough.	Aside from falsification, prejudice to a third person or intent to cause it, is essential.
<i>As to commission of a complex crime</i>	Can be complexed with other crimes if the act of falsification was the necessary means in the commission of such crimes, like <i>estafa</i> , theft, or malversation. <i>e.g.</i>	There is no complex crime of <i>estafa</i> through falsification of a private document. Hence, when one makes use of a private document, which he falsified, to defraud another, there results only one crime: that of

	Malversation through falsification of a public document; <i>Estafa</i> through falsification of a public document.	falsification of a private document.
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No falsification of private document through negligence or reckless imprudence

In falsification of private document, there is at least intent to cause damage, there must be malice; while falsification through imprudence implies lack of such intent or malice.

No such crime as attempted/frustrated falsification

Falsification is consummated the moment the genuine document is altered on the moment the false document is executed. However, there may be a frustrated crime of falsification if the falsification is imperfect (*Reyes, 2008*).

**FALSIFICATION OF WIRELESS TELEGRAPH
AND TELEPHONE MESSAGES
ART. 173**

Punishable Acts

1. Uttering fictitious wireless, telegraph or telephone message;
2. Falsifying wireless, telegraph or telephone message; and

Elements of par. 1 and 2:

- a. That the offender is an officer or employee of the Government or an officer or employee of a private corporation, engaged in the service of sending or receiving wireless, cable or telephone message; and
- b. That the offender commits any of the following acts:
 - i. Uttering fictitious wireless, cable, telegraph or telephone message; or
 - ii. Falsifying wireless, cable, telegraph, or telephone message.
3. Using such falsified message.

Elements:

- a. Offender knew that wireless, cable, telegraph, or telephone message was falsified by an officer or employee of a

private corporation, engaged in the service of sending or receiving wireless, cable or telephone message;

- b. He used such falsified dispatch; and
- c. The use resulted in the prejudice of a third party or at least there was intent to cause such prejudice.

Q: Can a private individual commit the crime of falsification of telegraphic dispatches?

A: It depends. A private individual cannot commit the crime falsification of telegraphic dispatches by direct participation, unless he is an employee of a corporation engaged in the business of sending or receiving wireless telegraph or telephone messages. But a private individual can be held criminally liable as principal by inducement in the falsification of telegraph dispatches or telephone messages. If he knowingly uses falsified telegraph, wireless or telephone messages to the prejudice of a third person, or with intent to cause such prejudice, it is not necessary that he be connected with such corporation.

**FALSE MEDICAL CERTIFICATES,
FALSE CERTIFICATES OF MERIT OR SERVICE
ART. 174**

Punishable Acts

1. Issuance of false certificate by a physician or surgeon in connection with the practice of his profession;
2. Issuance of a false certificate or merit or service, good conduct or similar circumstances by a public officer; and

NOTE: Intent to gain is immaterial. But if the public officer issued the false certificate in consideration of a promise, gift or reward, he will also be liable for bribery.

3. Falsification by a private person of any certificate falling within 1 and 2.

Certificate

A certificate is any writing by which testimony is given that a fact has or has not taken place.

NOTE: The phrase "or similar circumstances" in Art. 174 does not seem to cover property, because the circumstance contemplated must be similar to "merit," "service," or "good conduct."



Persons liable under Art. 174

1. Physician or surgeon;
2. Public officer; or
3. Private individual who falsified a certificate falling in the classes mentioned in nos. 1 and 2.

**USING FALSE CERTIFICATES
ART. 175**

Elements

1. A physician or surgeon had issued a false medical certificate, or public officer issued a false certificate of merit or service, good conduct, or similar circumstance, or a private person had falsified any of said certificates;
2. Offender knew that the certificate was false; and
3. He used the same.

NOTE: When any of the false certificates mentioned in Art. 174 is used in the judicial proceeding, Art. 172 does not apply, because the use of false document in judicial proceeding under Art. 172 is limited to those false documents embraced in Arts. 171 and 172; such use of the false certificates fall under Art. 175.

**MANUFACTURING AND POSSESSION OF
INSTRUMENTS FOR FALSIFICATION
ART. 176**

Punishable Acts

1. Making or introducing into the Philippines any stamps, dies, marks, or other instruments or implements for counterfeiting or falsification; and
2. Possessing with intent to use the instrument or implements for counterfeiting or falsification made in or introduced into the Philippines by another person.

NOTE: It is not necessary that the implements confiscated form a complete set for counterfeiting, it being enough that they may be employed by themselves or together with other implements to commit the crime of counterfeiting or falsification.

OTHER FALSITIES

**USURPATION OF AUTHORITY OR
OFFICIAL FUNCTIONS
ART. 177**

Offenses contemplated in Art. 177

1. **Usurpation of Authority** – by knowingly and falsely representing oneself to be an officer, agent or representative of any department or agency of the Philippine Government or any foreign government.

NOTE: The mere act of knowingly and falsely representing oneself to be an officer, etc. is sufficient. It is not necessary that he performs an act pertaining to a public officer.

2. **Usurpation of Official Functions**– by performing any act pertaining to any person in authority or public officer of the Philippine Government or of a foreign government or any agency thereof, under pretense of official position, and without being lawfully entitled to do so. **(BAR 2015)**

NOTE: It is essential that the offender should have performed an act pertaining to a person in authority or public officer, in addition to other requirements (*Reyes, 2008*).

Q: A councilor refused to vacate the office of the mayor despite an official opinion that it is the vice mayor who should discharge the duties of the mayor during the latter's temporary absence. He was charged with usurpation of authority and official functions but contending that such crime may only be committed by private individuals. Is he correct?

A: NO, violation of Art. 177 is not restricted to private individuals, public officials may also commit this crime (*People v. Hilvano, G.R. No. L-8583, July 31, 1956*).

Application of the provision to an occupant under color of title

This provision does NOT apply to an occupant under color of title. This would only apply to a usurper or one who introduces himself into an office that is vacant, or who, without color of title, ousts the incumbent and assumes to act as an officer by exercising some functions of the office (*People v. Buenaflor, G.R. No. 100992-CR, December 17, 1974*).

The function or authority usurped must pertain to:

1. The government;
2. Any person in authority; and
3. Any public officer

Usurpation of the authority or functions of a diplomatic, consular or other accredited officers of a foreign government is punishable under RA 75, in addition to the penalties provided by the Code (*Regalado, 2007*).

**USING FICTITIOUS NAME AND
CONCEALING TRUE NAME
ART. 178**

Acts punishable under Art. 178

1. Using fictitious name

Elements:

- a. Offender uses a name other than his real name;
- b. He uses the fictitious name publicly; and
- c. Purpose of use is to conceal a crime, to evade the execution of a judgment or to cause damage (to public interest).

NOTE: If the purpose is to cause damage to private interest, the crime will be *estafa* under Art. 315(2) (a).

2. Concealing true name

Elements:

- a. Offender conceals his true name and other personal circumstances; and
- b. Purpose is only to conceal his identity (*Reyes, 2008*).

“Fictitious Name”

Fictitious name is any other name which a person publicly applies to himself without authority of law (*Id., citing U.S. v. To Lee Piu*).

Note: The prisoner who is replaced must necessarily use the name of another, thus he is also guilty of using a fictitious name to *evade the execution of the judgment* against him. The one who takes his place and used a fictitious name to *conceal the crime* is guilty of delivering a prisoner from jail.

Fictitious name vis-à-vis Concealing true name

USE OF FICTITIOUS NAME	CONCEALING TRUE NAME
Element of publicity must be present.	Element of publicity is not necessary.
The purpose is either: <ol style="list-style-type: none"> a. to conceal a crime, or b. to evade the execution of a judgment, or c. to cause damage. 	The purpose is merely to conceal identity.

**ILLEGAL USE OF UNIFORM OR INSIGNIA
ART. 179**

Elements

1. Offender makes use of insignia, uniform or dress
2. The insignia, uniform or dress pertains to an office not held by the offender or to a class of persons of which he is not a member
3. Said insignia, uniform, or dress is used publicly and improperly

Exact imitation of a uniform or dress is unnecessary

A colorable resemblance calculated to deceive the common run of people, not those thoroughly familiar with every detail or accessory thereof (*People v. Romero, C.A. 58, O.G. 4402*).

Use of ecclesiastical habit of a religious order

The unauthorized use of ecclesiastical habit of a religious order is punishable under this article.

“Improper” use of uniform or insignia

The use thereof by the offender is a public and malicious use (*Regalado, 2007*). It means that the offender has no right to use the uniform or insignia.

FALSE TESTIMONY

How false testimony is committed



False testimony is committed by a person who, being under oath and required to testify as to the truth of a certain matter at a hearing before a competent authority, shall deny the truth or say something contrary to it (*Reyes, 2008*).

Forms of false testimony

Testimony given in:

1. Criminal Cases
2. Civil Cases
3. Other Cases

False testimony cannot be committed thru negligence

False testimony requires a criminal intent and cannot be committed thru negligence. It could not be frustrated or attempted.

Reason for punishing false testimony

Falsehood is always reprehensible; but it is particularly odious when committed in a judicial proceeding, as it constitutes an imposition upon the court and seriously exposes it to a miscarriage of justice.

FALSE TESTIMONY AGAINST A DEFENDANT ART. 180

Elements

1. There is a criminal proceeding;
2. Offender testifies falsely under oath against the defendant therein;
3. Offender who gives false testimony knows that it is false; and
4. Defendant against whom the false testimony is given is either acquitted or convicted in a final judgment

NOTE: Defendant must be sentenced to at least a correctional penalty or a fine or shall have been acquitted. Thus, if *arresto mayor* is imposed, Art. 180 is not applicable.

False testimony even if the testimony is not considered by the court

What is being considered here is the tendency of the testimony to establish or aggravate the guilt of the accused and not the result that the testimony may produce.

Note: The witness who gave false testimony is liable even if his testimony was not considered by the court.

Imposition of penalty under this Article

It depends upon the sentence of the defendant against whom the false testimony was given.

FALSE TESTIMONY FAVORABLE TO THE DEFENDANT ART. 181

Elements

1. A person gives false testimony;
2. In favor of the defendant; and
3. In a Criminal case.

NOTE: Conviction or acquittal of defendant in principal case is not necessary (*Reyes, 2017*).

Gravamen

Intent to favor the accused. False testimony in favor of a defendant need not directly influence the decision of acquittal and it need not benefit the defendant. The intent to favor the defendant is sufficient (*People v. Reyes, C.A., 48 O.G. 1837*).

Rectification after realizing the mistake

Rectification made spontaneously after realizing the mistake is NOT a false testimony.

Q: Can a defendant who falsely testified in his own behalf in a criminal case be guilty of false testimony favorable to the defendant?

A: YES. It must not be forgotten that the right of an accused to testify in his own behalf is secured to him, not that he may be enabled to introduce false testimony into the record, but to enable him to spread upon the record the truth as to any matter within his knowledge which will tend to establish his knowledge. Defendant is liable if he testifies in his favor by falsely imputing the crime to another person (*U.S. v. Soliman, G.R. No. L-11555, January 6, 1917*).

NOTE: The ruling in Soliman would only apply if the defendant voluntarily goes upon the witness stand and falsely imputes to some other person the commission of a grave offense. If he merely denies the commission of the crime or his participation therein, he should not be prosecuted for false testimony (*Reyes, 2008*).

The classification in determining whether the testimony is in favor or against the accused is significant in order to determine when the prescriptive period begins to run:

1. **In Favor**– right after the witness testified falsely, the prescriptive period commences to run because the basis of the penalty on the false witness is the felony charged to the accused regardless of whether the accused was acquitted or convicted or the trial has terminated.
2. **Against** – period will not begin to run as long as the case has not been decided with finality because the basis of the penalty on the false witness is the sentence on the accused testified against it. When the accused is acquitted, there is also a corresponding penalty on the false witness for his false testimony (*Boado, 2008*).

FALSE TESTIMONY IN CIVIL CASES ART. 182

Elements

1. Testimony must be given in a civil case;
2. It must relate to the issues presented in said case;
3. It must be false;
4. It must be given by the defendant knowing the same to be false; and
5. It must be malicious and given with an intent to affect the issues presented in said case.

NOTE: The criminal action of false testimony in civil cases must be suspended when there is a pending determination of the falsity or truthfulness of the subject testimonies in the civil case (*Ark Travel Express v. Judge Abrogar, G.R. No. 137010, August 29, 2003*).

Penalty depends on the amount of the controversy

The penalties vary – if the amount of the controversy is over P5,000; if not exceeding P5,000; or if it cannot be estimated (*Reyes, 2017*).

Inapplication of this article to special proceedings

False testimony given to a special proceeding is NOT punishable under this article. Art. 182 applies only to ordinary or special civil actions and supplementary or ancillary proceedings therein. Perjury committed in special proceedings, i.e.

probate proceeding, are covered by Art. 183 (*Regalado, 2007 citing U.S. v. Gutierrez and People v. Hernandez*).

FALSE TESTIMONY IN OTHER CASES AND PERJURY IN SOLEMN AFFIRMATION ART. 183

Perjury

Perjury is the willful and corrupt assertion of falsehood under oath or affirmation administered by authority of law on a material matter.

NOTE: Perjury committed in prosecutions under special laws, special proceedings, or under Art. 180 where the penalty is only *arresto mayor* and below, can be proceeded against under this article (*Regalado, 2007*).

Commission of perjury

Perjury is committed thru:

1. Falsely testifying under oath; or
2. Making a false affidavit.

Elements (BAR 2005)

1. Accused made a statement under oath or executed an affidavit upon a material matter (**BAR 2008**);
2. Statement or affidavit was made before a competent officer, authorized to receive and administer oath;
3. In that statement or affidavit, the accused made a willful and deliberate assertion of a falsehood (**BAR 1996**); and
4. Sworn statement or affidavit containing the falsity is required by law (**BAR 1991**).

The statement need not actually be required. It is sufficient that it was authorized by law to be made (*People v. Angangco, G.R. No. L-47693, October 12, 1943*).

NOTE: The venue in perjury, if committed by falsely testifying under oath, is the place where he testified. If committed by making false affidavit, the venue is the place where the affidavit was notarized (*Union Bank et al., v. People, G.R. No. 192565, February 28, 2012*).

Oath

Oath is any form of attestation by which a person signifies that he is bound in conscience to perform an act faithfully and truthfully.



Affidavit

A sworn statement in writing; a declaration in writing, made upon oath before an authorized magistrate or officer.

Competent person

A person who has a right to inquire into the questions presented to him upon matters under his jurisdiction.

“Material matter”

Material matter means the main fact which is the subject of the inquiry or any circumstance which tends to prove that fact, or any fact or circumstance which tends to corroborate or strengthen the testimony relative to the subject of inquiry, or which legitimately affects the credit of any witness who testifies (*U.S. v. Estraña, G.R. No. 5751, September 6, 1910*).

Test to determine the materiality of the matter

The test is not whether the evidence was proper to be admitted but whether if admitted it could properly influence the result of the trial.

Defense in perjury

Good faith or lack of malice is a defense in perjury. Mere assertion of falsehood is not enough to amount to perjury. The assertion must be deliberate and willful.

Perjury vis-à-vis False testimony

PERJURY	FALSE TESTIMONY
Any willful and corrupt assertion of falsehood on material matter under oath and not given in judicial proceedings.	Given in the course of a judicial proceeding.
There is perjury even during the preliminary investigation.	Contemplates actual trial.

Subornation of Perjury

It is committed by a person who knowingly and willfully procures another to swear falsely and the

witness suborned does testify under the circumstances rendering him guilty of perjury.

Subornation of perjury is not expressly penalized in the RPC, but the person who induces another to commit a perjury may be punished under Art. 183, in relation to Art. 17, as a principal by inducement to the crime of perjury while the one induced is liable as a principal by direct participation.

**OFFERING FALSE TESTIMONY IN EVIDENCE
ART. 184**

Elements

1. Offender offered in evidence a false witness or false testimony;
2. He knew the witness or testimony was false; and
3. Offer was made in a judicial or official proceeding.

NOTE: Art. 184 does not apply when the offender induced a witness to testify falsely. It applies when the offender knowingly presented a false witness, and the latter testified falsely. The one offering the testimony is liable under Art. 184 while the witness who testified is liable under Arts. 180-183 depending on the proceedings on which the testimony was offered and for whose favor the false testimony was made.

Penalty under this provision

Penalty is that for false testimony if committed in a judicial proceeding and the penalty is that for perjury if committed in other official proceeding.

FRAUDS

**MACHINATIONS IN PUBLIC AUCTIONS
ART. 185**

Punishable Acts and their elements

1. Soliciting any gift or promise as a consideration for refraining from taking part in any public auction.

Elements:

- a. There is a public auction;
- b. Offender solicits any gift or compromise from any of the bidders;
- c. Such gift or promise is the consideration for his refraining from taking part in that public auction; and

- d. Offender has the intent to cause the reduction of the price of the thing auctioned.

NOTE: It is not required that the person making the proposal actually refrains from taking part in any auction.

2. Attempting to cause bidders to stay away from an auction by threats, gifts, promises or any other artifice.

Note: The threat need not be effective nor the offer or gift accepted for the crime to arise.

Elements:

- a. There is a public auction;
- b. Offender attempts to cause the bidders to stay away from that public auction;
- c. It is done by threats, gifts, promises or any other artifice; and
- d. Offender has the intent to cause the reduction of the price of the thing auctioned.

NOTE: Mere attempt to cause prospective bidders to stay away from the auction is sufficient to constitute an offense. The threat need not be effective nor the offer or gift accepted.

**MONOPOLIES AND COMBINATIONS
IN RESTRAINT OF TRADE
ART. 186**

NOTE: Art. 186 has been repealed by the Philippine Competition Act or RA 10667

Violations of Art. 186 of the RPC committed before the effectivity of RA 10667 may continue to be prosecuted, unless the same has been barred by prescription, and subject to the procedure under Sec. 31 of RA 10667 [Sec. 55 (a), RA 10667] (Reyes, 2017).

Anti-Competitive Agreements under the Philippine Competition Act

(a) The following agreements, between or among competitors, are *per se* prohibited:

- (1) Restricting competition as to price, or components thereof, or other terms of trade;
- (2) Fixing price at an auction or in any form of bidding including cover bidding, bid

suppression, bid rotation and market allocation and other, analogous practices of bid manipulation;

(b) The following agreements, between or among competitors which have the object or effect of substantially preventing, restricting or lessening competition: shall be prohibited:

(1) Setting, limiting, or controlling production, markets, technical development, or investment;

(2) Dividing or sharing the market, whether by volume of sales or purchases, territory, type of goods or services, buyers or sellers or any other means;

(c) Agreements other than those specified in (a) and (b) of this section which have the object or effect of substantially preventing, restricting or lessening competition shall also be prohibited: Provided, Those which contribute to improving the production or distribution of goods and services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits, may not necessarily be deemed a violation of this Act.

An entity that controls, is controlled by, or is under common control with another entity or entities, have common economic interests, and are not otherwise able to decide or act independently of each other, shall not be considered competitors for purposes of this section (Sec 14, RA10667).

Penalties under RA 10667

An entity that enters into any anti-competitive agreement as covered by Chapter III, Section 14(a) and 14(b) under this Act shall, for each and every violation, be penalized by imprisonment from two (2) to seven (7) years, and a fine of not less than fifty million pesos (P50,000,000.00) but not more than two hundred fifty million pesos (P250,000,000.00). The penalty of imprisonment shall be imposed upon the responsible officers, and directors of the entity.

When the entities involved are juridical persons, the penalty of imprisonment shall be imposed on its officers, directors, or employees holding managerial positions, who are knowingly and willfully responsible for such violation (Sec. 30, RA10667).



**IMPORTATION AND DISPOSITION OF FALSELY
MARKED ARTICLES OR MERCHANDISE MADE
OF GOLD, SILVER, OR OTHER PRECIOUS
METALS OR THEIR ALLOYS
ART. 187**

Articles of the merchandise

1. Gold
2. Silver
3. Other precious metals
4. Their alloys

Elements

1. Offender imports, sells, or disposes of any of those articles or merchandise;
2. Stamps, brands, or marks of those articles of merchandise fail to indicate the actual fineness or quality of said metals or alloys; and
3. Offender knows that the stamps, brands or marks fail to indicate the actual fineness or the quality of the metals or alloys.

Alteration of Quality

The manufacturer who alters the quality or fineness of anything pertaining to his art or business is liable for estafa under Article 315, subdivision 2(b), of the Code.

NOTE: Selling the misbranded articles is not necessary.

CRIMES AGAINST PUBLIC MORALS

NOTE: Arts. 195-196 have been repealed and modified by PD Nos. 449, 483 and 1602, as amended by Letters of Instructions No. 816. Arts. 197-199 has been repealed and modified by PD 483 and PD 449.

OFFENSES AGAINST DECENCY AND GOOD CUSTOMS

**GRAVE SCANDAL
ART. 200**

Grave scandal

It consists of acts which are offensive to decency and good customs which, having been committed publicly, have given rise to public scandal to persons who have accidentally witnessed the same.

Elements

1. Offender performs an act or acts;
2. Such act or acts be *highly scandalous* as offending against decency or good customs;
3. Highly scandalous conduct is not expressly falling within any other article of this Code; and
4. Act or acts complained of be committed in a *public place* or within the *public knowledge* or *view*. **(BAR 1996)**

NOTE: There should be consent to do the scandalous act. If the scandalous act was done without consent, the crime committed may be acts of lasciviousness or violation of RA 7610 if a child is involved.

NOTE: If the acts of the offender are punished under another article of the RPC, ART. 200 is not applicable.

Commission of the crime in a private place

An act offensive to decency performed in a private place constitutes grave scandal. However, the act must be open to public view for it to be actionable.

NOTE: If committed in a public place, the performance of the act offensive to decency is already a crime even though there is no third party looking at it. Public view is not required. The public character of the place is sufficient.

Q: X, an 11 year-old girl, had sexual intercourse with her 18 year-old boyfriend Y. They performed the act in a secluded vacant lot. Unknown to them, there was a roving policeman at that time. Hence, they were arrested. What crime did they commit?

A: The sexual intercourse with the girl constitutes statutory rape. Though the act was carried out in a public place, criminal liability for grave scandal cannot be incurred because the conduct of Y is punishable under another article of the RPC.

NOTE: The highly scandalous conduct should not fall within any other article of the RPC. Thus, this article provides for a crime of last resort.

Essence of grave scandal

The essence of grave scandal is publicity and that the acts committed are not only contrary to morals and good customs but must likewise be of such character as to cause public scandal to those witnessing it. **(BAR 2013)**

Grave scandal vis-à-vis Alarms and scandal

BASIS	GRAVE SCANDAL	ALARMS AND SCANDAL
<i>As to its commission</i>	The acts of the offender are highly scandalous in such a manner as it offends decency and good customs.	The acts of the offender do not necessarily scandalize the public, but his acts produce alarm or danger to the public.
<i>As to its purpose</i>	The scandal involved refers to moral scandal offensive to decency or good customs, although it does not disturb public peace. But such conduct or act must be open to the public view.	The purpose is to disturb public peace.

**IMMORAL DOCTRINES, OBSCENE
PUBLICATIONS AND EXHIBITIONS, AND
INDECENT SHOWS
ART. 201 AS AMENDED BY PD 969**

Persons liable

1. Those who shall publicly expound or proclaim doctrines openly contrary to public morals;
2. Authors of obscene literature, published with their knowledge in any form, the editors publishing such literature; and the owners/operators of the establishment selling the same;
3. Those who, in theaters, fairs, cinematographs, or any other place, exhibit indecent or immoral plays, scenes, acts, or shows, it being understood that the obscene literature or indecent or immoral plays, scenes, acts or shows, whether live or in film, which are proscribed by virtue hereof, shall include those which:
 - a. Glorify criminals or condone crimes;
 - b. Serve no other purpose but to satisfy the market for violence, lust or pornography;
 - c. Offend any race, or religion;
 - d. Tend to abet traffic in and use of prohibited drugs;
 - e. Contrary to law, public order, morals, good customs, established policies, lawful orders, decrees and edicts;
4. Those who shall sell, give away, or exhibit films, prints, engravings, sculptures, or literatures which are offensive to morals.

NOTE: The object of the law is to protect the morals of the public. **(BAR 1993)**

NOTE: Mere possession of obscene materials, without intention to sell, exhibit, or give them away, is not punishable under Art. 201, considering the purpose of the law is to prohibit the dissemination of obscene materials to the public *(Reyes, 2017)*.

Meaning of Obscenity

Obscenity is something which is offensive to chastity, decency or delicacy. That which shocks the ordinary and common sense of men as an indecency.

Penalty in case the offender is a government official or employee who allows the violation of Section 1

The penalty as provided herein shall be imposed in its maximum period and, in addition, the accessory penalties provided for in the Revised Penal Code shall likewise be imposed.

Publicity is an essential element of this offense

This offense in any of the forms mentioned is committed only when there is publicity. It is an essential element.

Test of obscenity

1. Whether to the average person, applying contemporary standards would find the work, taken as a whole, appeals to the prurient interest;
2. Whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and
3. Whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. *(Miller vs. Caalifornia, 413 US 15 June 21, 1973)*

Liability of the author of obscene literature

The author becomes liable if it is published with his knowledge.

In every case, the editor publishing it is liable.

Viewing of pornographic materials in private

If the viewing of pornographic materials is done privately, there is no violation of Art. 201. What is protected is the morality of the public in general. The law is not concerned with the moral of one person.

Q: The criminal case for violation of Article 201 of RPC was dismissed because there was no concrete and strong evidence pointing them as the direct source of pornographic materials. Can petitioner now recover the confiscated hard disk containing the pornographic materials?

A: NO. Petitioner had no legitimate expectation of protection of their supposed property rights. PD 969, which amended Art. 201, also states that 'where the criminal case against any violation of this decree results in an acquittal, the obscene or immoral literature, films, prints, engravings, sculpture, paintings or other materials and articles involved in the violation shall nevertheless be

forfeited in favor of the government to be destroyed." In this case, the destruction of the hard disks and the software used in any way in the violation of the subject law addresses the purpose of minimizing if not eradicating pornography (*Nograles v. People, G.R. No. 191080, November 21, 2011*).

VAGRANTS AND PROSTITUTES

ART. 202, as amended by RA 10158 "An Act Decriminalizing Vagrancy"

NOTE: RA 10158 decriminalized vagrancy. All pending cases on vagrancy shall be dismissed and all persons serving sentence for vagrancy shall be immediately released upon effectivity of RA 10158 (*Reyes, 2017*).

Prostitutes

They are women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct.

Sexual intercourse is not a necessary element to constitute prostitution. The act of habitually indulging in lascivious conducts because of money or gain would already amount to prostitution.

Term prostitution is not applicable to a man

The term is applicable only to a woman who, for money or profit, habitually engages in sexual intercourse or lascivious conduct. A man who engages in the same conduct is not a prostitute but a vagrant.

His acts may also be punished under city/municipal ordinances.

No crime of prostitution by conspiracy

One who conspires with a woman in the prostitution business like pimps, taxi drivers or solicitors of clients are guilty of the crime under Article 341 for white slavery.

Art. 202 not applicable to minors

Persons below eighteen (18) years of age shall be exempt from prosecution for the crime of prostitution under Art. 202 of the RPC, such prosecution being inconsistent with the United Nations Convention on the Rights of the Child; Provided, That said persons shall undergo appropriate counselling and treatment program (*Sec. 58, RA 9344*).



CRIMES COMMITTED BY PUBLIC OFFICERS

**PUBLIC OFFICERS
ART. 203**

To be a public officer, one must be –

1. *Taking part* in the performance of *public functions* in the Government, or *performing* in said Government or in any of its branches *public duties* as an *employee, agent or subordinate official*, of any rank or class; and
2. That his authority to take part in the performance of public functions or to perform public duties must be –
 - a. By direct provision of the law, or
 - b. By popular election, or
 - c. By appointment by competent authority.**(BAR 1999)**

The term “public officers” embraces every public servant from the highest to the lowest rank. All public servants from the President down to the garbage collector if employed and paid by the government come within this term.

“Public Officer” defined under RA 3019

“Public Officer” includes:

1. Elective and appointive officials and employees;
2. Permanent or temporary;
3. Whether in the classified or unclassified; or
4. Exemption service receiving compensation, even nominal, from the government.

Q: Javier was charged with malversation of public funds. She was the private sector representative in the National Book Development Board (NBDB), which was created by Republic Act (RA) No. 8047, otherwise known as the “Book Publishing Industry Development Act”. Is Javier, a private sector representative to the board a public officer?

A: YES. Notwithstanding that Javier came from the private sector to sit as a member of the NBDB, the law invested her with some portion of the sovereign functions of the government, so that the purpose of the government is achieved. In this case, the government aimed to enhance the book publishing industry as it has a significant role in the national development. Hence, the fact that she was appointed from the public sector and not from the other branches or agencies of the government does not take her position outside the

meaning of a public office (*Javier v. Sandiganbayan, GR 147026-27, September 11, 2009*).

MALFEASANCE AND MISFEASANCE IN OFFICE

Three forms of breach of oath or duty

MISFEASANCE	MALFEASANCE	NONFEASANCE
Improper performance of some act which might be lawfully done.	Performance of some act which ought not to be done.	Omission of some act which ought to be performed.

Crimes of misfeasance

1. Knowingly rendering unjust judgment (*Art. 204, RPC*);
2. Rendering judgment through negligence (*Art. 205, RPC*);
3. Rendering unjust interlocutory order (*Art. 206, RPC*)(**BAR 2013**); and
4. Malicious delay in the administration of justice (*Art. 207, RPC*).

Crimes of malfeasance

1. Direct bribery (*Art. 210, RPC*); and
2. Indirect bribery (*Art. 211, RPC*).

Crime of nonfeasance

Dereliction of duty in the prosecution of offenses (*Art. 208, RPC*).

**KNOWINGLY RENDERING UNJUST JUDGMENT
ART. 204**

Elements

1. Offender is a judge;
2. He renders a judgment in a case submitted to him for decision;
3. Judgment is unjust; and
4. The judge knows that his judgment is unjust.

It is a fundamental rule that a judicial officer when

required to exercise his judgment or discretion is not criminally liable for any error he commits provided that he acts in good faith and with no malice (*Mendoza v. Villaluz, Adm. Case No. L-1797-CCC, August 27, 1981*).

"Judgment"

It is the final consideration and determination of a court of competent jurisdiction upon the matters submitted to it, in an action or proceeding. It must be:

1. Written in the official language;
2. Personally and directly prepared by the judge and signed by him; and
3. Shall contain clearly and distinctly a statement of the facts and the law upon which it is based.

"Unjust judgment"

An unjust judgment is one which is contrary to law or is not supported by the evidence or both.

Sources of an unjust judgment

1. Error;
2. Ill-will or revenge; or
3. Bribery.

It must be shown by positive evidence that the judgment was rendered by the judge with conscious and deliberate intent to do an injustice.

This crime cannot be committed by the members/justices of the appellate courts. In collegiate courts like the CA and SC, not only one magistrate renders or issues the judgment or interlocutory order. Conclusions and resolutions thereof are handed down only after deliberations among the members, so that it cannot be said that there is malice or inexcusable negligence or ignorance in the rendering of a judgment or order that is supposedly unjust.

JUDGMENT RENDERED THROUGH NEGLIGENCE ART. 205

Elements

1. Offender is a judge;
2. He renders a judgment in a case submitted to him for decision;
3. Judgment is manifestly unjust; and
4. It is due to his inexcusable negligence or ignorance.

"Manifestly unjust judgment"

A "manifestly unjust judgment" is a judgment which cannot be explained with reasonable interpretation or is a clear, incontrovertible and notorious violation of a legal precept. It must be

patently contrary to law if rendered due to ignorance or inexcusable negligence.

NOTE: Before a civil or criminal action against a judge for violations of Arts. 204 and 205 can be entertained, there must be a "final and authoritative judicial declaration" that the decision or order in question is indeed unjust. The pronouncement may result from either: (a) an action for certiorari or prohibition in a higher court impugning the validity of a judgment, or (b) an administrative proceeding in the Supreme Court against the judge precisely for promulgating an unjust judgment or order (*De Vera v. Pelayo, G.R. No. 137354, July 6, 2000*).

Abuse of discretion or mere error of judgment

Abuse of discretion or mere error of judgment is not punishable. A judge can only be held liable for gross ignorance of the law if it can be shown that he committed an error so gross and patent as to produce an inference of bad faith. In addition to this, the acts complained of must not only be contrary to existing law and jurisprudence, but should also be motivated by bad faith, fraud, dishonesty, and corruption (*Antonio Monticalbo v. Judge Cresente F. Maraya, Jr., A.M. No. RTJ-09-2197, April 13, 2011*).

UNJUST INTERLOCUTORY ORDER ART. 206

Elements

1. Offender is a judge; and
2. He performs any of the following acts:
 - a. Knowingly renders unjust interlocutory order or decree; or
 - b. Renders a manifestly unjust interlocutory order or decree through inexcusable negligence or ignorance.

Test in determining whether an order or judgment is interlocutory or final

If it leaves something to be done in the trial court with respect to the merits of the case, it is interlocutory; if it does not, it is final.

MALICIOUS DELAY IN THE ADMINISTRATION OF JUSTICE ART. 207

Elements

1. Offender is a judge;
2. There is a proceeding in his court;



3. He delays the administration of justice; and
4. The delay is malicious, that is, the delay is caused by the judge with deliberate intent to inflict damage on either party in the case.

NOTE: If the delay is not malicious, but committed through gross negligence, the crime committed is that under RA 3019, Sec. 3(e).

**PROSECUTION OF OFFENSES;
NEGLIGENCE AND TOLERANCE
ART. 208**

Punishable acts (BAR 1991, 1992, 2010)

1. Maliciously refraining from instituting prosecution against violators of law.
2. Maliciously tolerating the commission of offenses.

Elements (BAR 1991, 1992, 2010)

1. Offender is a public officer or officer of the law who has a duty to cause the prosecution of, or to prosecute, offenses;
2. There is dereliction of the duties of his office, that is, knowing the commission of the crime, he does not cause the prosecution of the criminal, or knowing that a crime is about to be committed, he tolerates its commission; and

NOTE: Dereliction of duty caused by poor judgment or honest mistake is not punishable.

3. Offender acts with malice and deliberate intent to favor the violator of the law.

Offenders under this article

1. **Public officer** – officers of the prosecution department, whose duty is to institute criminal proceedings for felonies upon being informed of their perpetration.
2. **Officer of the law** – those who are duty-bound to cause the prosecution and punishment of the offenders by reason of the position held by them.

Liability of a public officer who, having the duty of prosecuting the offender, harbored, concealed, or assisted in the escape of the felon

He is a *principal* in the crime defined and penalized in Art. 208. Such public officer is not merely an accessory.

Q: If a police officer tolerates the commission of a crime or otherwise refrains from apprehending the offender, is he liable for dereliction of duty?

A: NO. Such police officer does not have the duty to prosecute or to move the prosecution of the offender. It is the Chief of police which has the duty to do so. He can however be prosecuted as follows:

1. An accessory to the crime committed by the principal in accordance with Art. 19, par. 3; or
2. He may become a fence if the crime committed is robbery or theft, in which case he violates the Anti-Fencing Law; or
3. He may be held liable for violating the Anti-Graft and Corrupt Practices Act.

NOTE: Officers, agents or employees of the Bureau of Internal Revenue are not covered by this article as well.

**BETRAYAL OF TRUST BY AN ATTORNEY OR
SOLICITOR – BETRAYAL OF SECRETS
ART. 209**

Punishable acts

1. *Causing damage* to his client, either:
 - a. By any malicious breach of professional duty;
 - b. By inexcusable negligence or ignorance.
2. *Revealing* any of the *secrets of his client* learned by him in his professional capacity.

Damage is not necessary. The mere fact that a secret has been revealed is already punishable.

3. *Undertaking the defense of the opposing party* in the same case, *without the consent of his first client*, after having undertaken the defense of said first client or after having received confidential information from said client.

NOTE: If the client consents to it, there is no crime. The consent need not be in writing.

Illustration: The Code of Professional Responsibility mandates lawyers to serve their clients with competence and diligence. Rule 18.03 and Rule 18.04 state: *Rule 18.03.* A lawyer shall not neglect a legal matter entrusted to him, and his negligence in

connection therewith shall render him liable; *Rule 18.04*. A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

A lawyer breached these duties when he failed to reconstitute or turn over the records of the case to his client. His negligence manifests lack of competence and diligence required of every lawyer. His failure to comply with the request of his client was a gross betrayal of his fiduciary duty and a breach of the trust reposed upon him by his client. His sentiment against his client is not a valid reason for him to renege on his obligation as a lawyer. The moment he agreed to handle the case, he was bound to give it his utmost attention, skill and competence. Public interest requires that he exert his best efforts and all his learning and ability in defense of his client's cause. Those who perform that duty with diligence and candor not only safeguard the interests of the client, but also serve the ends of justice. They do honor to the bar and help maintain the community's respect for the legal profession (*Patricio Gone v. Atty. Macario Ga, A.C. No. 7771, April 6, 2011*).

Rule with regard to communications made with prospective clients

Under the rules on evidence, communications made with prospective clients to a lawyer with a view to engaging his professional services are already privileged even though client-lawyer relationship did not eventually materialize because the client cannot afford the fee being asked by the lawyer.

Rule as to privileged communications

A distinction must be made between confidential communications relating to past crimes already committed, and future crimes intended to be committed, by the client. Statements and communications regarding the commission of a crime already committed, made by a party who committed it, to an attorney, consulted as such, are privileged communications. Contrarily, communications between attorney and client having to do with the client's contemplated criminal acts, or in aid or furtherance thereof, are not covered by the cloak of privileges ordinarily existing in reference to communications between attorney and client. The existence of an unlawful purpose prevents the privilege from attaching

(*People v. Sandiganbayan, G.R. Nos. 115439-41, July 16, 1997*).

Procurador Judicial

A person who had some practical knowledge of law and procedure, but not a lawyer, and was permitted to represent a party in a case before an inferior court.

NOTE: There is no solicitor or *procurador judicial* under the Rules of Court.

DIRECT BRIBERY ART. 210

Commission of Bribery

Bribery is committed when a public officer receives a gift, present, offer or promise, by reason or in connection with the performance of his official duties. Bribery requires the concurrence of the will of the corruptor and the public officer otherwise the crime is not consummated (*Boado, 2008*).

NOTE: Bribery exists (1) WHEN THE GIFT IS OFFERED VOLUNTARILY, by a private person, or (2) WHEN THE GIFT IS SOLICITED by a public officer.

NOTE: Bribery refers to the act of the receiver. The act of the giver is corruption of public official under Art. 212.

Punishable acts (BAR 1990, 1993, 2001, 2005, 2009)

1. *Agreeing to perform or performing an act pertaining to the duties of the office which constitutes a crime* – If the act or omission amounts to a crime, it is not necessary that the corruptor should deliver the consideration or the doing of the act. Mere promise is sufficient. The moment there is a meeting of the minds, even without the delivery of the consideration, even without the public officer performing the act amounting to a crime, bribery is already committed on the part of the public officer. Corruption is already committed on the part of the supposed giver.
2. *Accepting a gift in consideration of the execution of an act which does not constitute a crime* – If the act or omission does not amount to a crime, the consideration must be delivered by the corruptor before a public



officer can be prosecuted for bribery. Mere agreement is not enough to constitute the crime because the act to be done in the first place is legitimate or in the performance of the official duties of the public official.

NOTE: The act executed must be unjust (*Reyes, 2017*).

3. *Abstaining from the performance of official duties.*

Elements (BAR 1990, 1993, 2001, 2005, 2009)

1. Offender is a public officer within the scope of Art. 203;
2. Offender accepts an offer or promise or receives a gift or present by himself or through another;
3. Such offer or promise be accepted, or gift or present received by the public officer:
 - a. With a view of committing some crime
 - b. In consideration of the execution of an act which does not constitute a crime, but the act must be unjust
 - c. To refrain from doing something, which is his official duty to do; and
4. That act which the offender agrees to perform or which he executes be connected with the performance of his official duties.

NOTE: There is no frustrated stage, for the reason that if the corruption of the official is accomplished, the crime is consummated.

The offer of gift or promise must be accepted by the public officer

In case there is only an offer of gift or promise to give something, the offer or the promise must be accepted by the officer. Further, the gift or present must have value or be capable of pecuniary estimation (*Reyes, 2017*).

Q: When does an act relate to the official duties of the public officer?

A: Official duties include any action authorized. The acts referred to in the law, which the offender agrees to perform or execute, must be ultimately related to or linked with the performance of his official duties. (*Tad-y vs. People, 466 SCRA 474, August 2005*)

But if the act agreed to be performed is so foreign to the duties of the office as to lack even color of authority, there is no bribery.

Q: Direct bribery is a crime involving moral turpitude. From which of the elements of direct bribery can moral turpitude be inferred? (BAR 2011)

A: Moral turpitude can be inferred from the third element: The offender takes a gift with a view of committing a crime in exchange.

The fact that the offender agrees to accept a promise or gift and deliberately commits an unjust act or refrains from performing an official duty in exchange for some favors, denotes a malicious intent on the part of the offender to renege on the duties which he owes his fellowmen and society in general. Also, the fact that the offender takes advantage of his office and position is a betrayal of the trust reposed on him by the public. It is a conduct clearly contrary to the accepted rules of right and duty, justice, honesty and good morals (*Magno v. COMELEC, G.R. No. 147904, October 4, 2002*).

Q: Suppose the public official accepted the consideration and turned it over to his superior as evidence of corruption, what is the crime committed?

A: The offense is attempted corruption only and not frustrated. The official did not agree to be corrupted.

NOTE: Under Art. 212, any person who shall have made the offers or promises or given the gifts is liable for corruption of public officers.

Temporary performance of public function sufficient to constitute a person a public officer

For the purpose of punishing bribery, the temporary performance of public functions is sufficient to constitute a person a public officer.

Q: Supposed a law enforcer extorts money from a person, employing intimidation and threatening to arrest the latter if he will not come across with money, what crime is committed?

A: If the victim actually committed a crime and the policeman demanded money so he will not be arrested, the crime is bribery. But if no crime has been committed and the policeman is falsely charging him of having committed one, threatening to arrest him if he will not come

across with some consideration, the crime is robbery (*Sandoval, 2010*).

Direct bribery vis-à-vis Prevaricación

DIRECT BRIBERY	Prevaricación
The officer refrained from doing something which was his official duty to do so in consideration of a gift promised or received.	No gift was promised or received in consideration for refraining to prosecute offenses.

**INDIRECT BRIBERY
ART. 211**

Indirect bribery

It is the crime of any public officer who shall accept gifts offered to him by reason of his office.

If the public officer does not accept the gift, this crime is not committed but the offeror is guilty of Corruption of Public Officials under Art. 212.

Elements (BAR 1997, 2005, 2009, 2010)

1. Offender is a public officer; **(BAR 2006)**
2. He accepts gifts; and
3. Said gifts are offered to him by reason of his office.

There is no attempted or frustrated indirect bribery because it is committed by accepting gifts offered to the public officer by reason of his office. If he does not accept the gift, he does not commit the crime. If he accepts the gifts, it is consummated (Reyes, 2017).

NOTE: The gift is given in anticipation of future favor from the public officer. PD 46 (*Making it punishable for public officials and employees to receive and for private persons to give, gifts on any occasion, including Christmas*) is committed in the same way. **(BAR 2006)**

Clear intention on the part of the public officer to take the gift offered

There must be a clear intention on the part of the public officer to take the gift offered and he should consider the property as his own for that moment. Mere physical receipt unaccompanied by any

other sign, circumstance or act to show such acceptance is not sufficient to convict the officer.

Direct bribery vis-à-vis Indirect bribery

DIRECT BRIBERY	INDIRECT BRIBERY
Public Officer receives gift.	
There is agreement between the public officer and the corruptor.	There is no agreement between the public officer and the corruptor.
The public officer is called upon to perform or refrain from performing an official act.	The public officer is not necessarily called upon to perform any official act. It is enough that he accepts the gifts offered to him by reason of his office.

**QUALIFIED BRIBERY
ART. 211-A**

Elements (BAR 2006)

1. Offender is a public officer entrusted with law enforcement;
2. He refrains from arresting or prosecuting an offender who has committed a crime punishable by reclusion perpetua and/or death; and
3. He refrains from arresting or prosecuting the offender in consideration of any promise, gift or present.

NOTE: The crime involved in qualified bribery is a heinous crime. The public officer need not receive a gift or present because a mere offer or promise is sufficient.

**CORRUPTION OF PUBLIC OFFICIALS
ART. 212**

Elements (BAR 1993, 2001, 2009)

1. Offender makes offers or promise or gives gifts or presents to a public officer; and
2. The offers or promises are made or the gifts or presents are given to a public officer under circumstances that will make the public officer liable for direct bribery or indirect bribery.

Rule when a public officer refuses to be corrupted, what crime is committed

The crime committed is attempted corruption of public official only.



Rule when a public official actually accepted a consideration and allowed himself to be corrupted, what is the crime committed

The corruptor becomes liable for consummated corruption of public official. The public officer also becomes equally liable for consummated bribery.

FRAUDS AND ILLEGAL EXACTIONS AND TRANSACTIONS

**FRAUDS AGAINST THE PUBLIC TREASURY AND SIMILAR OFFENSES
ART. 213**

Punishable acts

1. Entering into an agreement with any interested party or speculator or making use of any other scheme, to defraud the Government, in dealing with any person or with regard to furnishing supplies, the making of contracts, or the adjustment or settlement of accounts relating to public property funds (*fraud against public treasury*);

2. Demanding, directly or indirectly, the payment of sums different from or larger than those authorized by law, in the collection of taxes, licenses, fees and other imposts (*illegal exaction*);

NOTE: By mere demanding an amount different, whether bigger or smaller, than what should be paid, even if the debtor refuses, illegal exaction is committed.

3. Failing voluntarily to issue a receipt as provided by law, for any sum of money collected by him officially, in the collection of taxes, licenses, fees and other imposts (*illegal exaction*); and
4. Collecting or receiving directly or indirectly, by way of payment or otherwise, things or objects

of a nature different from that provided by law, in the collection of taxes, licenses, fees and other imposts (*illegal exaction*).

Elements of fraud against public treasury

1. Offender is a public officer;

2. He should have taken advantage of his office, that is, he intervened in the transaction in his official capacity;
3. He entered into an agreement with any interested party or speculator or made use of any other scheme with regard to:
 - a. Furnishing supplies
 - b. The making of contracts or
 - c. The adjustment or settlement of accounts relating to public property or funds; and
4. Accused had intent to defraud the Government.

NOTE: It is consummated by merely entering into an agreement with any interested party or speculator. It is not necessary that the Government is actually defrauded by reason of the transaction as long as the public officer who acted in his official capacity had the intent to defraud the Government.

Essence of the crime of fraud against public treasury

The essence of this crime is making the government pay for something not received or making it pay more than what is due.

Three ways of committing illegal exactions

1. *Demanding, directly or indirectly, the payment of sums different from or larger than those authorized by law* – Mere demand will consummate the crime, even if the taxpayer shall refuse to come across with the amount being demanded.

NOTE: It is not necessary that payment demanded be larger than amount due the government; it may be less than the amount due to the government.

2. *Failing voluntarily to issue a receipt as provided by law, for any sum of money collected by him officially* – The act of receiving payment due to the government without issuing a receipt will give rise to illegal exaction even though a provisional receipt has been issued. What the law requires is a receipt in the form prescribed by law, which means official receipt.
3. *Collecting or receiving directly or indirectly, by way of payment or otherwise, things or objects of a nature different from that provided by law* (Boado, 2012).

Elements of illegal exaction

1. The offender is a collecting officer;
2. He is entrusted with the collection of taxes, licenses, fees, and other imposts; and
3. He committed any of the following acts or omissions:
 - a. Demanding, directly or indirectly, the payment of sums different from or larger than those authorized by law;
 - b. Failing voluntarily to issue a receipt as provided by law, for any sum of money collected by him officially;
 - c. Collecting or receiving directly or indirectly, by way of payment or otherwise, things or objects of a nature different from that provided by law.

Essence of the crime of illegal exaction

The essence of the crime is not misappropriation of any of the amounts but the improper making of the collection which would prejudice the accounting of collected amounts by the government.

OTHER FRAUDS ART. 214

Elements

1. Offender is a public officer;
2. He takes advantage of his official position; and
3. He commits any of the frauds or deceptions enumerated in Arts. 315-318.

Court of competent jurisdiction

The RTC has jurisdiction over the offense regardless of the amount or penalty involved, because the principal penalty is disqualification.

PROHIBITED TRANSACTIONS ART. 215

Elements

1. Offender is an appointive public officer;
2. He becomes interested, directly or indirectly, in any transaction of exchange or speculation;
3. Transaction takes place within the territory subject to his jurisdiction; and
4. He becomes interested in the transaction during his incumbency.

Actual fraud is not required for violation of Art. 215. The act being punished is the possibility that fraud may be committed or that the officer may place his own interest above that of the government.

The transaction must be one of exchange or speculation, such as buying and selling stocks, commodities, lands, etc., hoping to take advantage of an expected rise and fall in price (Reyes, 2017).

NOTE: Purchasing stock or shares in a company is simply an investment, and is not a violation of the article; but buying regularly securities for resale is speculation (Reyes, 2017).

POSSESSION OF PROHIBITED INTEREST BY A PUBLIC OFFICER ART. 216

Persons liable under this article

1. Public officer who, directly or indirectly, became interested in any contract or business in which it was his official duty to intervene;

NOTE: Intervention must be by virtue of public office held.

2. Experts, arbitrators, and private accountants who, in like manner, took part in any contract or transaction connected with the estate or property in the appraisal, distribution or adjudication of which they had acted; or
3. Guardians and executors with respect to the property belonging to their wards or the estate.

NOTE: The mere violation of the prohibition is punished although no actual fraud occurs therefrom. The act is punished because of the possibility that fraud may be committed or that the officer may place his own interest above that of the Government or of the party which he represents (*U.S. v. Udarbe, G.R. No. 9945, November 12, 1914*).

Application of this article to appointive officials

Art. 216 includes not only appointive but also elective public officials. In fact, under the second paragraph of the said article, even private individuals can be held liable.

Constitutional provisions prohibiting interests

1. *Section 14, Article VI* - Members of Congress cannot personally appear as counsel; cannot be interested financially in any franchise or special privilege granted by government; cannot intervene in any matter before office of Government;
2. *Section 13, Article VII* -The President, Vice-President, the Members of the Cabinet and their deputies or assistant shall not, unless otherwise provided in this Constitution, hold any other office or employment during their tenure. They shall not, during said tenure, directly or indirectly, practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise, or special privilege granted by the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office; and
3. *Section 2, Article IX-A* - No member of a Constitutional Commission shall, during his tenure, hold any office or employment. Neither shall he engage in the practice of any profession or in the active management or control of any business which in any way may be affected by the functions of his office, nor shall he be financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by the government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations or their subsidiaries.

MALVERSATION OF PUBLIC FUNDS OR PROPERTY

Crimes called malversation of public funds or property

1. Malversation by appropriating, misappropriating or permitting any other person to take public funds or property (*Art. 217*);
2. Failure of an accountable public officer to render accounts (*Art. 218*);
3. Failure of a responsible public officer to render accounts before leaving the country (*Art. 219*);
4. Illegal use of public funds or property (*Art. 220*); and

5. Failure to make delivery of public funds or property (*Art. 221*)

**MALVERSATION BY APPROPRIATING, MISAPPROPRIATING OR PERMITTING ANY OTHER PERSON TO TAKE PUBLIC FUNDS OR PROPERTY
ART. 217**

Punishable acts (BAR 1994, 1999, 2001, 2005, 2008)

1. Appropriating public funds or property;
2. Taking or misappropriating the same;
3. Consenting, or through abandonment or negligence, permitting any other person to take such public funds or property; and
4. Being otherwise guilty of the misappropriation or malversation of such funds or property.

NOTE: The nature of the duties of the public officer and not the name of the office controls (*People v. Reyes, SB Case No. 26892, August 15, 2006*).

Common elements to all acts of malversation

1. Offender is a public officer;
2. He had the custody or control of funds or property by reason of the duties of his office;
3. Those funds or property were public funds or property for which he was accountable; and
4. He appropriated, took, misappropriated or consented, or through abandonment negligence, permitted another person to take them.

Necessity of misappropriating the funds

It is not necessary that the offender actually misappropriated the funds. It is enough that he has violated the trust reposed on him in connection with the property.

NOTE: Malversation is predicated on the relationship of the offender to the property or funds involved. His being remiss in the duty of safekeeping public funds violates the trust reposed by reason of the duties of his office.

Accountable public officer

An accountable public officer, within the purview of Art. 217 of the RPC, is one who has custody or control of public funds or property by reason of the

duties of his office. The nature of the duties of the public officer or employee, the fact that as part of his duties he received public money for which he is bound to account and failed to account for it, is the factor which determines whether or not malversation is committed by the accused public officer or employee (*Torres v. People*, G.R. No. 175074, August 31, 2011).

Q: When a public officer has no authority to receive the money for the Government, and upon receipt of the same, he misappropriated it, can he be held liable for malversation?

A: NO. If the public officer has no authority to receive the money for the Government, the crime committed is *estafa*, not malversation (*US v. Solis*, G.R. No. 2828, December 14, 1906), since he cannot be considered an accountable officer in that situation.

Meaning of "Appropriation"

It does not necessarily mean appropriation to one's personal advantage but rather, every attempt by one person to dispose of the property of another without right. (*Tabuena vs. Sandiganbayan*, 268 SCRA 332m February 17, 1997)

Prima facie evidence of malversation

The failure of a public officer to have duly forthcoming any public fund or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses (*Candao v. People*, G.R. Nos. 186659-710, October 19, 2011).

An accountable public officer may be convicted of malversation even if there is no direct evidence of misappropriation and the only evidence is that there is shortage in his accounts which he has not been able to explain satisfactorily. (*Quizo vs. Sandiganbayan*, 149 SCRA 108)

Prima facie evidence of malversation

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Q: Is written demand required to constitute a *prima facie* presumption of malversation?

A: The law does NOT require that a written demand be formally made to constitute a *prima facie* presumption of malversation. In *US v. Kalingo* (G.R. No. 11504, February 2, 1917), it was held that the failure of the accused who had custody of public funds to refund the shortage upon demand by the duly authorized offices constitutes *prima facie* evidence of malversation, notwithstanding the fact that such demand had been merely made verbally.

NOTE: Demand is not indispensable to constitute malversation. It merely raises a *prima facie* presumption that missing funds have been put to personal use (*Morong Water District v. Office of the Deputy Ombudsman*, G.R. No. 116754, March 17, 2000, citing *Nizurtada v. Sandiganbayan*).

Rebuttal of the presumption

The presumption could be overcome by satisfactory evidence of loss or robbery committed by a person other than the accused (*US v. Kalingo*, G.R. No. 11504, February 2, 1917).

Q: A revenue collection agent of BIR admitted his cash shortage on his collections to get even with the BIR which failed to promote him. A special arrangement was made between the BIR and the agent wherein the BIR would withhold the salary of the latter and apply the same to the shortage incurred until full payment was made. Is the collection agent guilty of the crime of malversation of funds?

A: YES. An accountable public officer may be convicted of malversation even if there is no direct evidence of misappropriation and the only evidence is that there is a shortage in his accounts which he has not been able to satisfactorily explain. In the present case, considering that the shortage was duly proven, retaliation against the BIR for not promoting him does not constitute a satisfactory or reasonable explanation of his failure to account for the missing amount (*Cua v. People*, G.R. No. 166847, November 16, 2011).

Crime of malversation can be committed by negligence

Q: Mesina, a Local Treasurer Officer I of Caloocan City, collected the City's collection for June 1998 from Baclit at the Mini City Hall. Mesina acknowledged the receipt of the said funds. On the same day, Baclit received several

phone calls, including a call from Coletto saying that the Patubig Collection was not remitted. The other phone call was from Mesina saying that he did not receive the patubig collection. The following morning, Mayor Malonzo asked Mesina about the said funds and Mesina denied receiving it. During investigation, Mesina's vault was opened for cash count, thereafter Mesina admitted that he collected the Patubig Collection but kept the money in his vault. Is Mesina liable for malversation?

A: YES, Mesina is liable for malversation. Malversation is committed either intentionally or by negligence. All that is necessary for a conviction is sufficient proof that the accused accountable officer had received the funds or property, and did not have them in his possession when demand therefor was made without any satisfactory explanation of his failure to have them upon demand. In the case at bar, Mesina feigned ignorance of having received the patubig collection when he phoned Baclit to tell her that he did not receive the collection (*Mesina v. People*, G.R. No. 162489, June 17, 2015).

Necessity of damage to the government to constitute malversation

It is not necessary that there is damage to the government; it is not an element of the offense. The penalty for malversation is based on the amount involved, not on the amount of the damage caused to the Government (*Reyes*, 2008).

Deceit in malversation

Deceit need not be proved in malversation. Malversation may be committed either through a positive act of misappropriation of public funds or property, or passively through negligence. To sustain a charge of malversation, there must *either* be criminal intent or criminal negligence, and while the prevailing facts of a case may not show that deceit attended the commission of the offense, it will not preclude the reception of evidence to prove the existence of negligence because *both* are *equally punishable* under Art. 217 of the RPC (*Torres v. People*, G.R. No. 175074, August 31, 2011).

Q: When a municipal officer who, in good faith, paid out public funds persons in accordance with the resolution of the municipal council but the payments were turned out to be in violation of the law, is there criminal liability?

A: NONE. When an accountable public officer, in good faith makes a wrong payment through honest mistake as to the law or to the facts concerning his duties, he is not liable for malversation. He is only civilly liable (*People v. Elvina*, G.R. No. 7280, February 3, 1913).

Required proof in order to convict an accused of malversation

All that is necessary to prove is that the defendant received in his possession public funds, that he could not account for them and did not have them in his possession and that he could not give a reasonable excuse for the disappearance of the same (*De Guzman v. People*, G.R. No. L-54288, December 15, 1982).

The return of the money malversed is merely a mitigating circumstance. It cannot exempt the accused from criminal liability (*People v. Velasquez*, G.R. No. 47741, April 28, 1941).

Instance when the public officer cannot be liable for malversation

When the accountable officer is obliged to go out of his office and borrow the sum alleged to be the shortage and later the missing amount is found in some unaccustomed place in his office, he is not liable for malversation (*US v. Pascual*, G.R. No. 8860, December 4, 1913).

Commission of malversation by a private person

A private person may also commit malversation under the following situations:

1. A private person conspiring with an accountable public officer in committing malversation (*People v. Sendaydiego*, G.R. No. L-33254 & G.R. No. L-33253, January 20, 1978);
2. When he has become an accomplice or accessory to a public officer who commits malversation;
3. When the private person is made the custodian in whatever capacity of public funds or

property, whether belonging to national or local government, and misappropriates the same; or

4. When he is constituted as the depositary or administrator of funds or property seized or attached by public authority even though said funds or property belong to a private individual.

Q: A private property was attached or levied by the sheriff, can it be a subject of the crime of malversation?

A: YES, though the property belonged to a private person, the levy or attachment of the property impressed it with the character of being part of the public property it being in *custodia legis*.

Q: If falsification of documents was resorted to for the purpose of concealing malversation, is a complex crime committed?

A: NO, for complex crimes require that one crime is used to *commit* another. If the falsification is resorted to for the purpose of *hiding* the malversation, the falsification and malversation shall be separate offenses (*People v. Sendaydiego*, G.R. No. L-33254, January 20, 1978).

Malversation vis-à-vis Estafa (BAR 1999)

BASIS	MALVERSION	ESTAFA
<i>As to persons liable</i>	Committed by an accountable public officer.	Committed by a private person or even a public officer who acts in a private capacity.
<i>As to property involved</i>	Deals with public funds or property.	Deals with private property.
<i>As to its commission</i>	May be committed without personal misappropriation, as when the accountable officer allows another to misappropriate the same.	Committed by personal misappropriation only.

FAILURE OF ACCOUNTABLE OFFICER TO RENDER ACCOUNTS ART. 218

Elements

- Offender is a public officer, whether in the service or separated therefrom;
- He must be an accountable officer for public funds or property;

- He is required by law or regulation to render accounts to the Commission on Audit, or to a provincial auditor; and
- He fails to do so for a period of two months after such accounts should be rendered.

NOTE: The article does not require that there be a demand that the public officer should render an account. It is sufficient that there is a law or regulation requiring him to render account (*Reyes, 2008*).

Q: Does the accused need to commit misappropriation to be liable under this Article?

A: NO. It is not essential that there be misappropriation. If there is misappropriation, he would also be liable for malversation under Art. 217 (*Reyes, 2008*).

Q: Commission on Audit (COA) Auditor came across a disbursement voucher for ₱101,736.00 prepared for petitioner, a former mayor of the municipality, as cash advance for the payment of freight and other cargo charges for 12 units of motorcycles supposed to be donated to the municipality. Her further investigation of the accounting records revealed that no payment intended for the charge was made to Royal Cargo Agencies. Petitioner alleged that he was neither informed nor did he receive any demand from COA to liquidate his cash advances.

A: Petitioner Lumaug is liable to the crime of failure of accountable officer to render accounts under Article 218 of the Revised Penal Code. Prior demand to liquidate is not a requisite for conviction under Article 218 of the Revised Penal Code. Article 218 consists of the following elements: that the offender is a public officer, whether in the service or separated therefrom; that he must be an accountable officer for public funds or property; that he is required by law or regulation to render accounts to the Commission on Audit, or to a provincial auditor; and that he fails to do so for a period of two months after such accounts should be rendered. Nowhere in the provision does it require that there first be a demand before an accountable officer is held liable for a violation of the crime. (*Aloysius Dait Lumaug v People Of The Philippines*)



**FAILURE OF A RESPONSIBLE PUBLIC OFFICER
TO RENDER ACCOUNTS BEFORE LEAVING THE
COUNTRY
ART. 219**

Elements

1. Offender is a public officer;
2. He must be an accountable officer for public funds or property; and
3. He must have unlawfully left (or be on point of leaving) the Philippines without securing from the Commission on Audit a certificate showing that his accounts have been finally settled.

Q: If the act of leaving the country is authorized by law, can the public officer be convicted under this Article?

A: NO. The act of leaving the Philippines must not be authorized or permitted by law to be liable under this Article (*Reyes, 2008*).

**ILLEGAL USE OF PUBLIC FUNDS OR PROPERTY
ART. 220**

Elements (BAR 1996)

1. Offender is a public officer;
2. There is public fund or property under his administration;
3. Such public fund or property has been appropriated by law or ordinance; and
4. He applies the same to a public use other than that for which such fund or property has been appropriated by law or ordinance.

Illegal use of public funds or property is also known as **technical malversation**.

Technical Malversation

In technical malversation, the public officer applies public funds under his administration not for his or another's personal use, but to a public use other than that for which the fund was appropriated by law or ordinance. Technical malversation is, therefore, not included in nor does it necessarily include the crime of malversation of public funds charged in the information. Thus, if the acts constituting the crime of technical malversation were not alleged in the information, the person accused cannot be convicted of malversation (*Parungao v. Sandiganbayan, G.R. 96025, May 15, 1991*).

How Technical Malversation is committed

Instead of applying it to the public purpose for which the fund or property was already appropriated by law, the public officer applied it to another purpose. **(BAR 2015)**

NOTE: In the *absence of a law or ordinance* appropriating the public fund allegedly technically malversed, the use thereof for another public purpose will not make the accused guilty of violation of Art. 220 of the RPC (*Abdulla v. People, G.R. No. 150129, April 6, 2005*).

Criminal intent as an element of technical malversation

Criminal intent is not an element of technical malversation. The law punishes the act of diverting public property earmarked by law or ordinance for particular public purpose to another public purpose. The offense is *mala prohibita*, meaning that the prohibited act is not inherently immoral but becomes a criminal offense because positive law forbids its commission based on consideration of public policy, order, and convenience. It is the commission of an act as defined by the law, and not the character or effect thereof, which determines whether or not the provision has been violated. Hence, malice or criminal intent is completely irrelevant (*Ysidoro v. People, G.R. No. 192330, November 14, 2012*).

Q: X appropriated the salary differentials of secondary school teachers of the Sulu State College contrary to the authorization issued by the DBM. Can X be held liable for technical malversation?

A: NO. The third element is lacking. The authorization given by DBM is not an ordinance or law contemplated in Art. 220 (*Abdulla v. People, G.R. No. 150129, April 6, 2005*).

Q: Suppose the application made proved to be more beneficial to the public than the original purpose for which the amount or property is appropriated, is there technical malversation?

A: YES, because damage is not an essential element of technical malversation.

Q: Suppose the funds had been appropriated for a particular public purpose, but the same was applied to private purpose, what is the crime committed?

A: The crime committed is simple malversation only.

Technical malversation vis-à-vis Malversation

TECHNICAL MALVERSATION		MALVERSATION	
Offenders are accountable public officers in both crimes.			
Offender derives no personal gain or benefit.		Generally, the offender derives personal benefit.	
Public fund or property is diverted to another public use other than that provided for in the law.		Conversion is for the personal interest of the offender or of another person.	

**FAILURE TO MAKE DELIVERY OF PUBLIC FUNDS OR PROPERTY
ART. 221**

Punishable acts

1. Failing to make payment by a public officer who is under obligation to make such payment from Government funds in his possession; and
2. Refusing to make delivery by a public officer who has been ordered by competent authority to deliver any property in his custody or under his administration.

NOTE: The refusal to make delivery must be malicious. Where an official stenographer retained some stenographic notes and failed to turn over the same upon demand as he was still going to transcribe the same, he was held not to have violated this article (*People v. Jubila, CA, 38 O.G. 1796*).

Elements

1. That the public officer has government funds in his possession;
2. That he is under obligation to make payments from such funds; and
3. That he fails to make payment maliciously.

**OFFICERS INCLUDED IN THE PRECEDING PROVISIONS
ART. 222**

Private individuals who may be liable under Art.217-221

1. Private individual who in any capacity whatever, have charge of any national, provincial or municipal funds, revenue or property;
2. Administrator, depository of funds or property attached, seized or deposited by public authority even if such property belongs to a private individual;
3. Those who acted in conspiracy in malversation; and
4. Accomplice and accessories to malversation.

NOTE: The word administrator used does not include judicial administrator appointed to administer the estate of a deceased person because he is not in charge of any property attached, impounded or placed in deposit by public authority. Conversion of effects in his trust makes him liable for *estafa*.

Q: AA was designated custodian of the distrained property of RR by the BIR. He assumed the specific undertakings which included the promise that he will preserve the equipment. Subsequently, he reported to the BIR that RR surreptitiously took the distrained property. Did AA become a public officer by virtue of his designation as custodian of distrained property by the BIR?

A: NO. To be a public officer, one must:

1. Take part in the performance of public functions in the government, or in performing in said government or in any of its branches public duties as an employee, agent or subordinate official, or any rank or class; and
2. That his authority to take part in the performance of public functions or to perform public duties must be by:
 - a. Direct provision of the law, or
 - b. Popular election, or
 - c. Appointment by competent authority (*Azarcon v. Sandiganbayan, G.R. No. 116033, February 26, 1997*).

INFIDELITY OF PUBLIC OFFICERS

**CONNIVING WITH OR CONSENTING TO
EVASION
ART. 223**

Elements (BAR 1996, 2009)

1. Offender is a public officer;
2. He has in his custody or charge a prisoner, either detention prisoner or prisoner by final judgment;
3. Such prisoner escaped from his custody;
4. That he was in connivance with the prisoner in the latter's escape (*U.S. v. Bandino, G.R. No. 9964, February 11, 1915*).

Classes of prisoners involved

1. Fugitive sentenced by final judgment to any penalty; and
2. Fugitive held only as detention prisoner for any crime or violation of law or municipal ordinance (*Reyes, 2017*).

Q: Is there a need that the convict has actually fled for the public officer to be liable under this Article?

A: NO. There is real and actual evasion of service of sentence when the custodian permits the prisoner to obtain relaxation of his imprisonment and to escape the punishment of being deprived of his liberty, thus making the penalty ineffectual, although the convict may not have fled (*US v. Bandino, ibid.*). (**BAR 1997**)

Q. Does releasing a prisoner for failure to comply within the time provided by Art. 125 exculpate liability under this Article?

A. YES. Where the chief of police released the detention prisoners because he could not file a complaint against them within the time fixed by Art. 125 due to the absence of the justice of the peace, he is not guilty of infidelity in the custody of prisoners (*People v. Lananan, G.R. No. L-6805, June 30, 1954*).

**EVASION THROUGH NEGLIGENCE
ART.224**

Elements

1. Offender is a public officer;

2. He is charged with the conveyance or custody of a prisoner, either detention prisoner or prisoner by final judgment;
3. Such prisoner escapes through his negligence.

The fact that the public officer recaptured the prisoner who escaped from his custody does not afford *complete* exculpation.

Gravamen

It is the positive carelessness that is short of deliberate non-performance of his duties as guard (*People v. Reyes et al., 36 O.G. 316*).

Q: Is an order to the prisoner to keep close to the police officer while the latter was answering the telephone call sufficient precaution?

A: NO. The adequate precaution which should have been taken up by him was to lock up the prisoner before answering the telephone call (*Remocal v. People, G.R. No. 47521, April 8, 1941*).

Q: A policeman permitted a prisoner to answer a call of nature in a hidden shed outside the building. The policeman remained near the prisoner by the door. The prisoner escaped through the back of the bath. Is the policeman liable under Art 224?

A: NO. Not every little mistake or distraction of a guard leading to prisoner's taking advantage of a dilapidated building is negligence. He can, however, be held administratively liable

Liability of the escaping prisoner

1. *If the fugitive is serving his sentence by reason of final judgment* – he is liable for evasion of the service of sentence under Art.157;
2. *If the fugitive is only a detention prisoner* – he does not incur any criminal liability.

**ESCAPE OF PRISONER UNDER THE CUSTODY
OF A PERSON NOT A PUBLIC OFFICER
ART. 225**

Elements

1. Offender is a private person;
2. Conveyance or custody of prisoner or person under arrest is confided to him;
3. Prisoner or person under arrest escapes; and

4. Offender consents to the escape of the prisoner or person under arrest or that the escape takes place through his negligence.

This article is not applicable if a private person was the one *who made the arrest* and he consented to the escape of the person he arrested (*Reyes, 2008*).

Infidelity committed by private person

Under Art. 225, infidelity can also be committed by a private person to whom the prisoner was entrusted and he connived with the prisoner (*Art. 223*) or through his negligence (*Art. 224*) the prisoner was allowed to escape.

If the escape was with consideration, bribery is also deemed committed because he was performing a public function, hence is, at that instance, deemed to be a public officer (*Boado, 2008*).

REMOVAL, CONCEALMENT OR DESTRUCTION OF DOCUMENT ART. 226

This crime is also called infidelity in the custody of documents.

Elements (BAR 2005, 2015)

1. The offender is a public officer;
2. He abstracts, destroys, or conceals documents or papers;
3. Said documents or papers should have been entrusted to such public officer by reason of his office; and
4. Damage, whether serious or not, to a third party or to the public interest should have been caused.

The document must be complete and one by which a right can be established or an obligation could be extinguished.

What is a "document"

A document is any written statement by which a right is established or an obligation extinguished.

NOTE: Books, pamphlets or periodicals sent through the mail for commercial purposes are not considered as documents for the purpose of this article (*People v. Aganis, 47 Phil. 945*).

Damage contemplated under this Article

The damage in this article may consist in mere alarm to the public to the alienation of its confidence in any branch of the government service (*Kataniag v. People, G.R. No. 48398, November 28, 1942*).

Persons liable under this Article

Only public officers who have been officially entrusted with the documents or papers may be held liable under Art. 226.

Commission of the crime of infidelity of documents

1. *Removal* – presupposes appropriation of the official documents. It does not require that the record be brought out of the premises where it is kept. It is enough that the record be removed from the place where it should be transferred.
2. *Destruction* – is equivalent to rendering useless or the obliteration of said documents; the complete destruction thereof is not necessary.
3. *Concealment* – means that the documents are not forwarded to their destination and it is not necessary that they are secreted away in a place where they could not be found.

Q: Suppose, in the case for bribery or corruption, the monetary consideration marked as exhibits were spent by the custodian, what is the crime committed?

A: The crime committed is infidelity in the custody of documents because the money adduced as exhibits partake the nature of a document and not as money.

Q: Is there a need for criminal intent to be held liable under this Article?

A: To warrant a finding of guilt for the crime of infidelity in the custody of documents, the act of *removal*, as a mode of committing the offense, should be coupled with criminal intent or illicit purpose (*Manzanaris v. People, 127 SCRA 201*). However, if the act is committed by *destroying or concealing documents*, proof of illicit purpose is not required. The reason is that while in removal, the accused may have a lawful or commendable motive, in destroying or concealing, the offender could not have a good motive (*Reyes, 2008*).



When removal is considered to be for an illicit purpose

Removal is for an illicit purpose when the intention of the offender is to:

1. Tamper with it;
2. Profit by it; or
3. Commit an act constituting a breach of trust in the official care thereof.

Consummation of this crime

The crime of removal of public document in breach of official trust is consummated upon its removal or secreting away from its usual place in the office and after the offender had gone out and locked the door, it being immaterial whether he has or has not actually accomplished the illicit purpose for which he removed said document (*Kataniag v. People, G.R. No. 48398, November 28, 1942*).

Q: If the postmaster fails to deliver the mail and instead retained them, can he be held liable under this Article?

A: YES. The simple act of retaining the mail without forwarding the letters to their destination, even though without opening them or taking the moneys they contained, already constitutes infidelity on the part of the post office official (*US V. Peña, G.R. No. 4451, December 29, 1908*).

**OFFICER BREAKING SEAL
ART. 227**

Elements

1. Offender is a public officer;
2. He is charged with the custody of papers or property;
3. These papers or property are sealed by proper authority; and
4. He breaks the seals or permits them to be broken.

It is the breaking of the seals and not the opening of a closed envelope which is punished (*Reyes, 2008*).

It is sufficient that the seal is broken, even if the contents are not tampered with. This article does not require that there be damage caused or that there be intent to cause damage (*Reyes, 2008*).

The mere breaking of the seal or the mere opening of the document would already bring about infidelity even though no damage has been suffered by anyone or by the public at large.

Rationale for penalizing the act of breaking the seal

The act is being punished because the public officer, in breaking the seal or opening the envelope, violates the confidence or trust reposed on him.

NOTE: The public officer liable under this article must be one who breaks seals without authority to do so (*Reyes, 2008*).

**OPENING OF CLOSED DOCUMENTS
ART. 228**

Elements

1. Offender is a public officer;
2. Any closed papers, documents or objects are entrusted to his custody;
3. He opens or permits to be opened said closed papers, documents or objects; and
4. He does not have proper authority.

Under Art. 228, the closed documents must be entrusted to the custody of the accused by reason of his office (*People v. Lineses, C.A. 40 O.G., Supp. 14, 4773*).

Art. 228 does not require that there be damage or intent to cause damage (*Reyes, 2008*).

**REVELATION OF SECRETS BY AN OFFICER
ART. 229**

Punishable acts

1. Revealing any secrets known to the offending public officer by reason of his official capacity.

Elements:

- a. Offender is a public officer;
- b. He knows of a secret by reason of his official capacity;
- c. He reveals such secret without authority or justifiable reasons; and
- d. Damage, great or small, is caused to the public interest.

NOTE: The "secrets" referred to in this article are those which have an official or public character, the revelation of which may prejudice public

interest. They refer to secrets relative to the administration of the government and not to secrets of private individuals.

2. Wrongfully delivering papers or copies of papers of which he may have charge and which should not be published.

Elements:

- a. Offender is a public officer;
- b. He has charge of papers;
- c. Those papers should not be published;
- d. He delivers those papers or copies thereof to a third person;
- e. The delivery is wrongful; and
- f. Damage is caused to public interest.

This article punishes minor official betrayals, infidelities of little consequences affecting usually the administration of justice, executive or official duties or the general interest of the public order.

If the public officer is merely entrusted with the papers but not with the custody of the papers, he is not liable under this provision.

Furthermore, military secrets or those affecting national interest are covered by the crime of espionage and not by the crime of revelation of secrets.

Revelation of Secrets by an Officer v. Infidelity in the Custody of Document/Papers by removing the same

REVELATION OF SECRETS BY AN OFFICER	INFIDELITY IN THE CUSTODY OF DOCUMENTS/ PAPERS BY REMOVING THE SAME
The papers contain secrets and therefore should not be published and the public officer having charge thereof removes and delivers them wrongfully to a third person.	The papers do not contain secrets but their removal is for an illicit purpose.

**PUBLIC OFFICER REVEALING SECRETS OF PRIVATE INDIVIDUAL
ART. 230**

Elements

1. Offender is a public officer;
2. He knows of the secrets of private individual by reason of his office; and
3. He reveals such secrets without authority or justifiable reason.

NOTE: The revelation will not amount to a crime under this article if the secrets are contrary to public interest or to the administration of justice. Revelation to any one person is necessary and sufficient; public revelation is not required (*Reyes, 2008*).

Damage to private individuals is not necessary (*Reyes, 2012*).

**OTHER OFFENSES OR IRREGULARITIES BY
PUBLIC OFFICERS**

When the offender is an attorney-at-law and he reveals the secrets of his client learned by him in his professional capacity, he is not liable under this article, but under ART. 209.

**OPEN DISOBEDIENCE
ART. 231**

Elements

1. Offender is a judicial or executive officer;
2. There is judgment, decision or order of a superior authority;
3. Such judgment, decision or order was made within the scope of the jurisdiction of the superior authority and issued with all the legal formalities; and
4. Offender without any legal justification openly refuses to execute the said judgment, decision or order, which he is duty bound to obey.

NOTE: The refusal must be clear, manifest and decisive or a repeated and obstinate disobedience in the fulfillment of an order.

How open disobedience is committed

Open disobedience is committed when judicial or executive officer shall openly refuse to execute the judgment, decision, or order of any superior authority (*Reyes, 2008*).



**DISOBEDIENCE TO ORDER OF SUPERIOR
OFFICER, WHEN SAID ORDER WAS SUSPENDED
BY INFERIOR OFFICER
ART. 232**

Elements

1. Offender is a public officer;
2. An order is issued by his superior for execution;

NOTE: The order of the superior must be legal or issued within his authority, otherwise, this article does not apply. If the order of the superior is illegal, the subordinate has a legal right to refuse to execute such order, for under the law, obedience to an order which is illegal is not justified and the subordinate who obeys such order can be held criminally liable under Art. 11, par. 6.

3. He has for any reason suspended the execution of such order;
4. His superior disapproves the suspension of the execution of the order; and
5. Offender disobeys his superior despite the disapproval of the suspension.

The disobedience must be open and repeated. What is punished by the law is insubordination of the act or defying the authority which is detrimental to public interest.

**REFUSAL OF ASSISTANCE
ART. 233**

Elements

1. Offender is a public officer;
2. Competent authority demands from the offender that he lend his cooperation towards the administration of justice or other public service; and
3. Offender fails to do so maliciously.

Any refusal by a public officer to render assistance when demanded by competent public authority, as long as the assistance requested from him is within his duty to render and that assistance is needed for public service, constitutes refusal of assistance.

Investigators and medico-legal officers who refuse to appear to testify in court after having been subpoenaed may also be held liable under this article.

Is damage to the public interest or to third parties necessary to consummate the crime?

There must be damage to the public interest or to a third party. If the damage is serious, the penalty is higher (*Reyes, 2012*).

**REFUSAL TO DISCHARGE ELECTIVE OFFICE
ART. 234**

Elements

1. Offender is elected by popular election to a public office;
2. He refuses to be sworn in or to discharge the duties of said office; and
3. There is no legal motive for such refusal to be sworn in or to discharge the duties of said office.

NOTE: Discharge of duties becomes a matter of duty and not a right.

**MALTREATMENT OF PRISONERS
ART. 235**

Elements

1. Offender is a public officer or employee;
2. He has under his charge a prisoner or detention prisoner; and

If the public officer is not charged with the custody of the prisoner, he is liable for physical injuries.

3. He maltreats such prisoner either of the following manners:
 - a. By overdoing himself in the correction or handling of a prisoner or detention prisoner under his charge either:
 - i. By the imposition of punishments not authorized by the regulations; or
 - ii. By inflicting such punishments (those authorized) in a cruel or humiliating manner.
 - b. By maltreating such prisoner to extort a confession or to obtain some information from the prisoner (**BAR 1999**).

The maltreatment should not be due to personal grudge, otherwise, offender is liable for physical injuries only.

Illustration: Hitting a prisoner by a *latigo* even if the purpose is to instill discipline is not authorized by law and constitutes violation of

this article. On the other hand, requiring prisoners to dig a canal where culverts shall be placed to prevent flooding in the prison compound is authorized by law and does not violate this article; but if the public officer would order the prisoner to do so from morning up to late evening without any food, then this article is involved, as he inflicted such authorized punishment in a cruel and humiliating manner.

Rule when a person is maltreated by a public officer who has actual charge of prisoners

Two crimes are committed, namely – *maltreatment* under Art.235 and *physical injuries*. Maltreatment and physical injuries may not be complexed because the law specified that the penalty for maltreatment shall be in addition to his liability for the physical injuries or damage caused.

Maltreatment refers not only to physical maltreatment but also moral, psychological, and other kinds of maltreatment because of the phrase “physical injuries or damage caused” and “cruel or humiliating manner” (*Boado, 2008*).

Rule in cases wherein the person maltreated is not a convict or a detention prisoner

The crime committed would either be:

1. *Coercion* – If the person not yet confined in jail is maltreated to extort a confession, or
2. *Physical injuries* – If the person maltreated has already been arrested but is not yet booked in the office of the police and put in jail.

Illustration: If a *Barangay* Captain maltreats a person after the latter’s arrest but before confinement, the offense is not maltreatment but physical injuries. The victim must actually be confined either as a convict or a detention prisoner (*People v. Baring, 37 O.G. 1366*).

NOTE: Sec. 25 of RA 9372 (Human Security Act of 2007) punishes any person who use threat, intimidation, or coercion, or who inflict physical pain or torment, or mental moral, or psychological pressure, which shall vitiate the free-will of a charged or suspected person under investigation and interrogation for the crime of terrorism or the crime of conspiracy to commit terrorism.

**ANTICIPATION OF DUTIES OF A PUBLIC OFFICE
ART. 236**

Elements

For a person to be held liable, the following elements must be present:

1. That the offender is entitled to hold a public office or employment either by election or appointment;
2. The law requires that he should first be sworn in and/or should first give a bond;
3. He assumes the performance of the duties and powers of such office; and
4. He has not taken his oath of office and/or given the bond required by law.

**PROLONGING PERFORMANCE OF
DUTIES AND POWERS
ART. 237**

Elements

For a person to be held liable, the following elements must be present:

1. That the offender is holding a public office;
2. That the period allowed by law for him to exercise such function and duties has already expired; and
3. That the offender continues to exercise such function and duties.

The officers contemplated by this article are those who have been suspended, separated, declared over-aged, or dismissed.

**ABANDONMENT OF OFFICE OR POSITION
ART. 238**

Elements

For a person to be held liable, the following elements must be present:

1. That the offender is holding a public office;
2. That he formally resigns from his office;

The final or conclusive act of a resignation’s acceptance is the notice of acceptance (*Light Rail Transit Authority v. Salvaña, G.R. No. 192074, June 10, 2014*).

3. That his resignation has not yet been accepted; and
4. That he abandons his office to the detriment of the public service.



Circumstances qualifying the offense

The offense is qualified when the real motive of resignation is to evade the discharge of duties of preventing, prosecuting or punishing any crime Title One, and Chapter One of Title Three of Book Two of the RPC.

Title One, and Chapter One of Title Three of Book Two of the RPC refer to the crimes of: (1) treason, (2) conspiracy and proposal to commit treason, (3) misprision of treason, (4) espionage, (5) inciting to war or giving motives for reprisal, (6) violation of neutrality, (7) correspondence with hostile country, (8) flight to enemy country, (9) piracy and mutiny, (10) rebellion, (11) coup d'état, (12) conspiracy and proposal to commit coup d'état, (13) disloyalty of public officers, (14) inciting to rebellion, (15) sedition, (16) conspiracy to commit sedition, and (17) inciting to sedition.

Abandonment of office vis-à-vis Dereliction of duty under Art. 208

ABANDONMENT OF OFFICE	DERELICTION OF DUTY
Committed by any public officer.	Committed only by public officers who have the duty to institute prosecution of the punishment of violations of law.
The public officer abandons his office to evade the discharge of his duty.	The public officer does not abandon his office but he fails to prosecute an offense by dereliction of duty or by malicious tolerance of the commission of offenses.

**USURPATION OF LEGISLATIVE POWERS
ART. 239**

Elements

1. That the offender is an executive or judicial officer; and
2. That he:
 - a. Makes general rules and regulations beyond the scope of his authority;
 - b. Attempts to repeal a law; or
 - c. Suspend the execution thereof.

**USURPATION OF EXECUTIVE FUNCTIONS
ART. 240**

Elements

1. That the offender is a judge; and
2. That the offender:
 - a. Assumes the power exclusively vested to executive authorities of the Government; or
 - b. Obstructs executive authorities from the lawful performance of their functions.

**USURPATION OF JUDICIAL FUNCTIONS
ART. 241**

Elements

1. That the offender is holding an office under the Executive Branch of the Government; and
2. That he:
 - a. Assumes the power exclusively vested in the Judiciary; or
 - b. Obstructs the execution of any order or decision given by a judge within his jurisdiction.

Arts. 239-241 punishes the usurpation of powers of the three branches of the Government in order to uphold the separation and independence of the three equal branches.

**DISOBEYING REQUEST OF DISQUALIFICATION
ART. 242**

Elements

1. That the offender is a public officer;
2. That a proceeding is pending before such public officer;
3. There is a question brought before the proper authority regarding his jurisdiction, which is yet to be decided;
4. He has been lawfully required to refrain from continuing the proceeding; and
5. He continues the proceeding.

NOTE: The offender is still liable even if the question of jurisdiction has been resolved in his favor later on.

**ORDERS OR REQUESTS BY EXECUTIVE OFFICERS TO ANY JUDICIAL AUTHORITY
ART. 243**

Elements

1. That the offender is an executive officer;

2. That the offender addresses any order or suggestion to any judicial authority; and
3. That the order or suggestion relates to any case or business within the exclusive jurisdiction of the courts of justice.

The purpose of this article is to maintain the independence of the judiciary.

UNLAWFUL APPOINTMENTS ART. 244

Elements

1. Offender is a public officer;
2. He nominates or appoints a person to a public office;

“Nominate” is different from “recommend.” While nomination constitutes a crime, mere recommendation does not.

3. Such person lacks the legal qualification thereof; and
4. Offender knows that his nominee or employee lacks the qualifications at the time he made the nomination or appointment.

ABUSES AGAINST CHASTITY ART. 245

Elements

1. That the offender is a public officer;
2. That he solicits or makes any indecent or immoral advances to a woman; and
3. That the offended party is a woman who is:
 - a. Interested in matters pending before the public officer for his decision or where the public officer is required to submit a report or to consult with a superior officer;
 - b. Under the custody of the offender, who is a warden or other public officer directly charged with the care and custody of prisoners or persons under arrest; or
 - c. The wife, daughter, sister or any relative falling within the same degree by affinity of the person under the custody and charge of the offender.

The mother of a person under the custody of any public officer is not included as a possible offended party but the offender may be prosecuted under the Sec. 28 of RA 3019 (*Anti-Graft and Corrupt Practices Act*).

Essence of the crime abuses against chastity

The essence of the crime is the mere making of immoral or indecent solicitation or advances.

Ways of committing abuses against chastity

1. Soliciting or making immoral or indecent advances to a woman interested in matters pending before the offending officer for decision, or with respect to which he is required to submit a report to or consult with a superior officer
2. Soliciting or making immoral or indecent advances to a woman under the offender's custody
3. Soliciting or making indecent advances to the wife, daughter, sister or relative within the same degree by affinity of any person in the custody of the offending warden or officer

NOTE: The crime can be committed by mere proposal, and it is not necessary for the woman solicited to yield to the proposal of the offender. Proof of solicitation is not necessary when there is sexual intercourse.

CRIMES AGAINST PERSONS

**PARRICIDE
ART. 246**

Elements (BAR 1994, 1997, 1999, 2003, 2015)

1. That a person is killed;
2. That the deceased is killed by the accused; and
3. That the deceased is the
 - a. Legitimate/Illegitimate father;
 - b. Legitimate/Illegitimate mother;
 - c. Legitimate/Illegitimate child;
 - d. Other legitimate ascendant;
 - e. Other legitimate descendant; or
 - f. Legitimate spouse.

The relationship, except the spouse, must be in the direct line and not in the collateral line.

Essential element of parricide

The relationship of the offender with the victim must be:

1. Legitimate, except in the case of parent and child;
2. In the direct line; and
3. By blood, except in the case of a legitimate spouse.

This must be alleged and proved. If not alleged, it can only be considered as an ordinary aggravating circumstance.

Proof that must be established to constitute parricide of a spouse

There must be a valid subsisting marriage at the time of the killing, and such fact should be alleged in the Information.

Q: Elias killed Susana. He was charged with parricide. During the trial, no marriage contract was presented. Is the non-presentation of the marriage contract fatal to the prosecution of the accused for parricide?

A: There is a presumption that persons living together as husband and wife are married to each other. The mere fact that no record of the marriage exists in the registry of marriage does not invalidate said marriage, as long as in the celebration thereof and all the requisites for its validity are present (*People v. Borromeo, 133 SCRA 106, October 31, 1984*).

The maxim *semper praesumitur matrimonio* and the presumption "that a man and woman deporting themselves as husband and wife have entered into a lawful contract of marriage" applies pursuant to Sec. 5[bb], Rule 131, Rules of Court (*People v. Majuri, 96 SCRA 472*).

Q: If a person killed another not knowing that the latter was his son, will he be guilty of parricide? (BAR 1996)

A: YES. The law does not require knowledge of relationship between them.

Q: If a person wanted to kill another but by mistake killed his own father will he be guilty of parricide? What is the penalty imposable?

A: YES. The law does not require knowledge of relationship between them, but Art. 49 will apply with regards the proper penalty to be imposed, which is the penalty for the lesser offense in its maximum period.

Criminal liability of stranger conspiring in the commission of the crime of parricide

The stranger is liable for homicide or murder, as the case may be, because of the absence of relationship. The rule on conspiracy that the act of one is the act of all does not apply here because of the personal relationship of the offender to the offended party. It is immaterial that he knew of the relationship of the accused and the deceased.

Q: Suppose X killed his brother. What is the crime committed?

A: Murder, because brothers are not part of those enumerated under Art. 246. Their relation is in the collateral line and not as ascendants or descendants of each other.

Q: Suppose a husband, who wanted to kill his sick wife, hired a killer. The hired killer shot the wife. What are the crimes committed?

A: The husband is liable for parricide as principal by inducement. The hired killer is liable for murder. The personal relationship of the husband to wife cannot be transferred to a stranger.

Q: Suppose A, an adopted child of B, killed the latter's parents. Will A be liable for parricide?

A: NO. An adopted child is considered as a legitimate child BUT since the relationship is

exclusive between the adopter and the adopted, killing the parents of the adopter is not considered as parricide of other legitimate ascendants.

Age of the child

The child killed by his parent must be at least three days old. If the child is less than three days old, the crime is infanticide, which is punishable under Art. 255.

Parricide vis-à-vis Infanticide

BASIS	PARRICIDE	INFANTICIDE
<i>As to basis</i>	Its basis is the relationship between the offender and the victim.	The basis is the age of the child-victim.
<i>As to commission</i>	It can be committed only by the relatives enumerated.	Infanticide may be committed by any person whether relative or not of the victim.
<i>As to application of conspiracy</i>	Conspiracy cannot be applied because the relationship of the offender and the victim is an essential element. A separate information must be filed for the parricide and the murder or homicide on the part of the non-relative conspirator.	Conspiracy is applicable because the circumstance of age pertains to the victim; only one information shall be prepared for all the conspirators.

Cases of parricide not punishable by *reclusion perpetua* to death

1. Parricide through negligence (Art. 365);
2. Parricide by mistake (Art. 249); and

3. Parricide under exceptional circumstance (Art. 247).

DEATH OR PHYSICAL INJURIES INFLICTED UNDER EXCEPTIONAL CIRCUMSTANCES ART. 247 (BAR 2001, 2005, 2015)

Requisites

1. A legally married person or a parent surprises his spouse or daughter, the latter under 18 years of age and living with him, in the act of committing sexual intercourse;
2. He or she kills any or both of them or inflicts upon any or both of them any serious physical injury in the act or immediately thereafter; and
3. He has not promoted or facilitated the prostitution of his wife or daughter, or that he or she has not consented to the infidelity of the other spouse.

There is no criminal liability when less serious or slight physical injuries are inflicted. The presence of the requisites enumerated above is an absolutory cause.

Art. 247 does not define any crime; thus, it cannot be alleged in an Information. Murder, homicide or parricide needs to be filed first, with Art. 247 being raised as a defense.

Q: Pedro, a policeman, had slight fever and decided to go home early. However, he was shocked and enraged when, after opening the door of his bedroom, he saw his brother, Julius completely naked, having sexual intercourse with his wife, Cleopatra. Pedro shot and killed Julius. Cleopatra fled from the bedroom but Pedro ran after her and shot and killed her. Is Pedro criminally liable for the death of Julius and Cleopatra?

A: Under Article 247 of the RPC, Pedro will be penalized by *destierro* for killing both Julius and Cleopatra. He is also civilly liable. However, if what was inflicted was only less serious or slight physical injuries (not death or serious physical injury), there is no criminal liability.

Stages contemplated under Art. 247

1. When the offender surprised the other spouse with a paramour or mistress in the act of committing sexual intercourse.

Surprise means to come upon suddenly or

unexpectedly.

2. When the offender kills or inflicts serious physical injury upon the other spouse and paramour while in the act of intercourse, or immediately thereafter, that is, after surprising.

“Immediately thereafter” means that the discovery, escape, pursuit and the killing must all form parts of one continuous act. The act done must be a direct result of the outrage of the cuckolded spouse (*Reyes, 2012*). **(BAR 1991)**

Necessity that the spouse actually saw the sexual intercourse

It is not necessary that the spouse actually saw the sexual intercourse. It is enough that he/she surprised them under such circumstances that no other reasonable conclusion can be inferred but that a carnal act was being performed or has just been committed.

Illustration: A bar examinee, who killed the paramour of his wife in a mahjong session, an hour after he had surprised them in the act of sexual intercourse in his house, since at that time, he had to run away and get a gun as the paramour was armed, was granted the benefits of this article (*People v. Abarca, G.R. No. 74433, September 14, 1987*).

Q: The accused was shocked to discover his wife and their driver sleeping in the master’s bedroom. Outraged, the accused got his gun and killed both. Can the accused claim that he killed the two under exceptional circumstances? (BAR 1991, 2001, 2005, 2007, 2011)

A: NO, since the accused did not catch them while having sexual intercourse.

Q: A and B are husband and wife. One night, A, a security guard, felt sick and cold, hence, he decided to go home around midnight after getting permission from his duty officer. Approaching the masters bedroom, he was surprised to hear sighs and giggles inside. He opened the door very carefully and peeped inside where he saw his wife B having sexual intercourse with their neighbor C. A rushed inside and grabbed C but the latter managed to wrest himself free and jumped out of the window. A followed suit and managed to catch C again and after a furious struggle, managed

also to strangle him to death. A then rushed back to their bedroom where his wife B was cowering under the bed covers. Still enraged, A hit B with fist blows and rendered her unconscious. The police arrived after being summoned by their neighbors and arrested A who was detained, inquested and charged for the death of C and serious physical injuries of B.

- a. **Is A liable for C’s death? Why?**
- b. **Is A liable for B’s injuries? Why? (BAR 1991, 2001, 2005, 2007)**

A:

- a. **YES**, A is liable for C’s death but under the exceptional circumstances in Art. 247 of the RPC where only *destierro* is prescribed. Art. 247 governs since A surprised his wife B in the act of having sexual intercourse with C, and the killing of C was immediately thereafter as the discover, escape, pursuit and killing of C form one continuous act (*US v. Vargas, G.R. No. 1053, May 7, 1903*).
- b. **YES**, A is liable for the serious physical injuries he inflicted on his wife but under the same exceptional circumstances in Art. 247 of the RPC for the same reason.

Parent need not be legitimate

The law does not distinguish. It is not necessary that the parent be legitimate.

Application of this article if the daughter is married

This article applies only when the daughter is single because while under 18 years old and single, she is under parental authority. If she is married, her husband alone can claim the benefits of Art. 247.

Q: When third persons are injured in the course of the firing at the paramour, will the offending spouse be free from criminal liability?

A: NO. Inflicting death or physical injuries under exceptional circumstances is not murder. The offender cannot therefore be held liable for frustrated murder for the serious injuries suffered by third persons. It does not mean, however, that the offender is totally free from any responsibility. The offender can be held liable for serious physical injuries through simple imprudence or negligence (*People v. Abarca, G.R. No. 74433, September 14, 1987*).

**MURDER
ART. 248**

Elements of murder

1. That a person was killed;
2. That the accused killed him;
3. That the killing was attended by any of the qualifying circumstances mentioned in *Art. 248*; and
4. That the killing is not parricide or infanticide.

Murder (BAR 1999, 2001, 2008, 2009, 2010)

Murder is the unlawful killing of any person which is not parricide or infanticide, provided that any of the following circumstances is present:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity. **(BAR 1995, 2000, 2006, 2008, 2015)**

If committed "*by a band*", it is still murder because of the circumstance of "*with the aid of armed men*."

2. In consideration of a price, reward or promise.

If this aggravating circumstance is present in the commission of the crime, it affects not only the person who received the money or reward but also the person who gave it.

3. By means of inundation, fire, poison, explosion, shipwreck, stranding on a vessel, derailment or assault upon a railroad, fall of an airship, by motor vehicles, or with the use of any other means involving great waste and ruin. **(BAR 1997, 2005)**

Appreciated only if the primordial criminal intent is to kill, and fire was only used as a means to do so, it is murder. But if the primordial intent is to destroy the property through fire and incidentally somebody died, it is arson.

Treachery and evident premeditation are inherent in murder by poison and, as such, cannot be considered as aggravating circumstance.

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of

an earthquake, eruption of volcano, destructive cyclone, epidemic, or other public calamity

The offender must take advantage of the calamity to qualify the crime to murder.

5. With evident premeditation
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

Outraging means any physical act to commit an extremely vicious or deeply insulting act while scoffing is any verbal act implying a showing of irreverence.

Outraging or scoffing at the person or corpse of the victim is the only instance that does not fall under Art. 14 on aggravating circumstances in general.

Dwelling/Nocturnity are not qualifying circumstances

Dwelling and nocturnity are not included in the enumeration of qualifying circumstances. But nocturnity or night time can be a method or form of treachery. In such case, it is treachery, not night time that is qualifying.

Number of circumstances necessary to qualify homicide to murder

Only one. If there is a second circumstance, it will operate as a generic aggravating which will not affect the penalty because the maximum penalty of death has been abolished by RA 9346.

Rules for the application of the circumstances which qualify the killing to murder

1. That murder will exist with any of the circumstances.
2. Where there are more than one qualifying circumstance present, only one will qualify the killing, with the rest to be considered as generic aggravating circumstances.
3. That when the other circumstances are absorbed or included in one qualifying circumstance, they cannot be considered as generic aggravating.
4. That any of the qualifying circumstances enumerated must be alleged in the information.



When treachery is present

The offender commits any of the crimes against persons, employing means, methods or forms in its execution which tend directly and especially to ensure its execution, without risk to himself or herself arising from any defense which the offended party might make (*People v. Torres, Sr., G.R. No. 190317, August 22, 2011*).

When treachery exists in the crime of murder

1. The malefactor employed such means, method or manner of execution to ensure his or her safety from the defensive or retaliatory acts of the victim;
2. At the time of the attack, the victim was not in a position to defend himself; and
3. The accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him (*People v. Lagman, G.R. No. 197807, April 16, 2012*).

NOTE: Killing of a child of tender age is murder qualified by treachery.

A frontal attack does not necessarily rule out treachery. The qualifying circumstance may still be appreciated if the attack was so sudden and so unexpected that the deceased had no time to prepare for his or her defense (*People v. Perez, G.R. No. 134756, February 13, 2001*).

Q: H and W hailed a jeepney where a drunk Glino sat beside W. Glino's head fell on W's shoulder. H told Glino to sit properly. The latter arrogantly retorted, "Anong pakialam mo?" and cursed H. Glino the provokingly asked H, "Anong gusto mo?" H replied, "Wala akong sinabing masama." After the heated verbal tussle, Glino appeared to have calmed down. He told the driver to stop because he would alight. As the jeepney ground to a halt, Glino drew a 29-inch balisong and stabbed H. H failed to offer any form of resistance and thereafter, died. Glino contended that he is only liable for homicide since there was no treachery as the victim was forewarned of the danger. Is the contention of Glino legally tenable?

A: NO. The rule is well-settled in this jurisdiction that treachery may still be appreciated even though the victim was forewarned of the danger to his person. What is decisive is that the attack was executed in a manner that the victim was rendered defenseless and unable to retaliate (*People v. Glino, 539 SCRA 432, December 4, 2007*).

A killing done at the spur of the moment is not treacherous. (*People vs. Nitcha, 240 SCRA 283, January 19, 1995*)

Requisites of evident premeditation

1. Time when the accused decided to commit the crime;
2. Overt act manifestly indicating that he clung to the determination; and
3. A sufficient lapse of time between the decision and execution, allowing the accused to reflect upon the consequences of his act (*People v. Tabornal, G.R. No. 188322, April 11, 2012*).

Q: A killed B by stabbing B in the heart which resulted to B's death. The witness is the wife of the victim, who said that a day prior to the killing, A threatened B. Based on the testimony of the wife, A was prosecuted for murder due to evident premeditation. Is the charge correct?

A: NO, the crime committed is homicide only. A mere threat is not sufficient to constitute evident premeditation.

Conviction when the qualifying circumstances were not those proved in the trial

Where the qualifying circumstances were not those proved in the trial, the accused cannot be convicted of murder because any of the qualifying circumstances under Art. 248 is an ingredient of murder, not merely a qualifying circumstance.

The circumstances must be both alleged and proved in the trial, otherwise, they cannot be considered because the right of the accused to be informed of the charge against him will be violated.

Cruelty as a qualifying circumstance of murder (Art. 248) vis-à-vis cruelty as a generic aggravating circumstance under Art. 14

CRUELTY UNDER ART. 248	CRUELTY UNDER ART. 14
Aside from cruelty, any act that would amount to scoffing or decrying the corpse of the victim will qualify the killing to murder.	Requires that the victim be alive, when the cruel wounds were inflicted and, therefore, there must be evidence to that effect.

**HOMICIDE
ART. 249**

Homicide

Homicide is the unlawful killing of any person, which is neither parricide, murder, nor infanticide.

Elements

1. That a person is killed;
2. That the accused killed him without any justifying circumstance;
3. The accused had intention to kill which is presumed; and
4. The killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide.

Importance of evidence of intent to kill in homicide

Evidence to show intent to kill is important only in attempted or frustrated homicide. This is because if death resulted, intent to kill is conclusively presumed. It is generally shown by the kind of weapon used, the parts of the victim's body at which it was aimed, and by the wounds inflicted. The element of intent to kill is incompatible with imprudence or negligence.

How intent to kill can be proved

Evidence to prove intent to kill in crimes against persons may consist, *inter alia*, of:

1. The means used by the malefactors;
2. The nature, location and number of wounds sustained by the victim;
3. The conduct of the malefactors before, at the time of, or immediately after the killing of the victim;
4. The circumstances under which the crime was committed; and
5. The motive of the accused (*People v. Lanuza y Bagaoisan*, G.R. No. 188562, August 17, 2011).
6. Words uttered at the time of inflicting the injuries on the victim may also be considered. (*De Guzman vs. People*, 742 SCRA 501, November 26, 2014).

NOTE: If A would shoot B at one of his feet, at a distance of one meter, there is no intent to kill. If B is hit, the crime is only physical injuries. If B is not hit, the offense is Discharge of Firearms (Art. 254).

Q: X, a pharmacist, compounded and prepared the medicine on prescription by a doctor. X erroneously used a highly poisonous substance. When taken by the patient, the latter nearly died. The accused was charged with frustrated homicide through reckless imprudence. Is the charge correct?

A: NO, it is error to convict the accused of frustrated homicide through reckless imprudence. He is guilty of physical injuries through reckless imprudence. The element of intent to kill in frustrated homicide is incompatible with negligence or imprudence. Intent in felonies by means of *dolo* is replaced with lack of foresight or skill in felonies by *culpa*.

Q: A shot C with a pistol. Almost immediately after A had shot C, B also shot C with B's gun. Both wounds inflicted by A and B were mortal. C was still alive when B shot him. C died as a result of the wounds received from A and B, acting independently of each other. Who is liable for the death of C?

A: Since either wound could cause the death of C, both are liable and each one of them is guilty of homicide. The burden of proof is on each of the defendants to show that the wound inflicted by him did not cause the death. The one who inflicted a wound that contributed to the death of the victim is equally liable (*U.S. v. Abiog*, G.R. No. L-12747, November 13, 1917).

This ruling is applicable only when there is no conspiracy between or among the accused. When there is conspiracy, it is not necessary to apply this ruling because in such case, the act of one is the act of all.

Use of unlicensed firearms in committing murder or homicide

In view of the amendments introduced by R.A. 8294 and 10591, separate prosecutions for homicide and illegal possession of firearms are no longer in order. Instead, illegal possession of firearms is merely taken as an aggravating circumstance in the crime of murder. (*People vs Gaborne*, GR. No. 210710, July 27, 2016)

Accidental homicide

It is the death of a person brought about by a lawful act performed with proper care and skill, and without homicidal intent.



Example: In a boxing bout where the game is freely permitted by law or local ordinance, and all the rules of the game have been observed,
The resulting death or injuries cannot be deemed felonious, since the act of playing the game is a lawful act.

Q: Supposing Pedro was found on the street dead with 30 stab wounds at the back. A witness said that he saw Juan running away carrying a bladed weapon. What crime was committed by Juan?

A: Homicide and not murder. Even if the stab wounds were found on the back of Pedro, it is not conclusive of the presence of the qualifying circumstance of treachery. Further, the witness merely saw Juan running. He must have seen the infliction of the wound.

NOTE: For treachery to be appreciated, it must be present and seen by the witness right at the inception of the attack (*People v. Concillado, G.R. No. 181204, November 28, 2011*).

***Corpus delicti* in crimes against persons**

Corpus delicti is defined as the body, foundation or substance upon which a crime has been committed. (GR. No. 133541, April 14, 2004)

In all crimes against persons in which the death of the victim is an element of the offense, there must be satisfactory evidence of (1) the fact of death and (2) the identity of the victim.

**PENALTY FOR FRUSTRATED PARRICIDE,
MURDER OR HOMICIDE
ART. 250**

Penalties imposable under Art. 250

The Court may impose a penalty two degrees lower for frustrated parricide, murder or homicide. In cases of attempted parricide, murder or homicide then the Court may impose a penalty three degrees lower.

NOTE: This provision is permissive, NOT MANDATORY. However an attempt on, or a conspiracy against, the life of the Chief Executive, member of his family, any member of his cabinet or members of the latter's family is punishable by death (*PD 1110-A*).

**DEATH CAUSED IN A TUMULTUOUS AFFRAY
ART. 251**

Tumultuous affray (BAR 1997, 2010)

It means a commotion in a tumultuous and confused manner, to such an extent that it would not be possible to identify who the killer is if death results, or who inflicted the serious physical injuries, but the person or persons who used violence are known.

Tumultuous affray exists when *at least four persons* took part therein.

Elements

1. There be several or at least 4 persons;
2. That they did not compose groups organized for the common purpose of assaulting and attacking each other reciprocally, **otherwise, they may be held liable as co-conspirators;**
3. That these several persons quarreled and assaulted one another in a confused and tumultuous manner;
4. Someone was killed in the course of the affray;

NOTE: The person killed in the course of the affray need not be one of the participants in the affray. He could be a mere passerby.

5. It cannot be ascertained who actually killed the deceased.

NOTE: if the one who inflicted the fatal wound is known, the crime is not tumultuous affray. It is a case of homicide.

6. The person or persons who inflicted serious physical injuries or who used violence can be identified.

This article does not apply if there is concerted fight between two organized groups.

What brings about the crime of tumultuous affray?

The crime of tumultuous affray is brought about by the inability to ascertain the actual perpetrator, not the tumultuous affray itself that brings about the crime. It is necessary that the very person who caused the death cannot be known, and not that he cannot be identified.

Crime committed if the person who caused the death is known but cannot be identified

If he is known but only his identity is not known, he will be charged for the crime of homicide or murder under a fictitious name not death in a tumultuous affray.

Persons liable for death in a tumultuous affray

1. The person or persons who inflicted the serious physical injuries are liable; or
2. If it is not known who inflicted the serious physical injuries on the deceased, all the persons who used violence upon the person of the victim are liable, but with lesser liability.

Q: M left his house together with R, to attend a public dance. Two hours later, they decided to have a drink. Not long after, M left to look for a place to relieve himself. According to R, he was only about three meters from M who was relieving himself when a short man walked past him, approached M and stabbed him at the side. M retaliated by striking his assailant with a half-filled bottle of beer. Almost simultaneously, a group of seven men, ganged up on M and hit him with assorted weapons, i.e., bamboo poles, stones and pieces of wood. R, who was petrified, could only watch helplessly as M was being mauled and overpowered by his assailants. M fell to the ground and died before he could be given any medical assistance. What crime is committed in the given case?

A: The crime committed is Murder and not Death Caused in Tumultuous Affray. A tumultuous affray takes place when a quarrel occurs between several persons who engage in a confused and tumultuous manner, in the course of which a person is killed or wounded and the author thereof cannot be ascertained. The quarrel in the instant case is between a distinct group of individuals, one of whom was sufficiently identified as the principal author of the killing, as against a common, particular victim (*People v. Unlagada, G.R. No. 141080, September 17, 2002*).

Q: A, B and C are members of SFC Fraternity. While eating in a seaside restaurant, they were attacked by X, Y and Z members of a rival fraternity. A rumble ensued in which the above-named members of the two fraternities assaulted each other in confused and tumultuous manner resulting in the death of A. As it cannot be ascertained who actually killed A, the members of the two fraternities took part in the rumble and were charged for death

caused in a tumultuous affray. Will the charge prosper? (2010 BAR)

A; No, the charge of death caused in a tumultuous affray will not prosper. In death caused by tumultuous affray under Art. 251 of the RPC, it is essential that the persons involved did not compose groups organized for the common purpose of assaulting and attacking each other reciprocally. In this case, there is no tumultuous affray since the participants in the rumble belong to organized fraternity.

**PHYSICAL INJURIES INFLICTED IN
TUMULTUOUS AFFRAY
ART. 252**

Elements

1. There is a tumultuous affray as referred to in the preceding article;
2. A participant or some participants thereof suffer serious physical injuries or physical injuries of a less serious nature only;
3. Person responsible thereof cannot be identified; and
4. All those who appear to have used violence upon the person of the offended party are known.

This article will not apply when a person is killed.

Kind of injury contemplated in the crime of physical injuries in a tumultuous affray

The physical injury should be serious or less serious and resulting from a tumultuous affray. If the physical injury sustained is only slight, this is considered as inherent in a tumultuous affray.

The victim must be a participant in the affray.

Persons liable for this crime

Only those who used violence are punished, because if the one who caused the physical injuries is known, he will be liable for the physical injuries actually committed, and not under this article.

**GIVING ASSISTANCE TO SUICIDE
ART. 253**

Punishable acts

1. Assisting another to commit suicide, whether the suicide is consummated or not; (**BAR 2008**) and



2. Lending assistance to another to commit suicide to the extent of doing the killing himself.

Criminal liability of a person who attempts to commit suicide

A person who attempts to commit suicide does NOT incur any criminal liability because society has always considered a person who attempts to kill himself as an unfortunate being, a wretched person more deserving of pity rather than of penalty. However, he may be held liable for the crime of disturbance of public order if indeed serious disturbance of public peace occurred due to his attempt to commit suicide.

Euthanasia not giving assistance to suicide

Euthanasia is the practice of painlessly putting to death a person suffering from some incurable disease. Euthanasia is not lending assistance to suicide. The person killed does not want to die. A doctor who resorts to euthanasia of his patient may be liable for murder.

**DISCHARGE OF FIREARM
ART. 254**

Elements

1. Offender discharges a firearm against another person; and
2. Offender has no intention to kill the person.

NOTE: There must be no intent to kill. The purpose of the offender is only to intimidate or frighten the offended party. This does not apply to police officers in the performance of their duties.

Imprudence in illegal discharge

The crime of illegal discharge cannot be committed through imprudence because it requires that the discharge must be directed at another.

NOTE: The crime is discharge of firearm even if the gun was not pointed at the offended party when it was fired as long as it was initially aimed by the accused at or against the offended party.

Discharge towards the house of the victim

The discharge towards the house of the victim is not a discharge of firearm. Firing a gun at the house of the offended party, not knowing in what

part of the house the people were, is only alarms and scandals under Art. 155.

Discharge of firearm resulting to the death of a victim

If the offender discharges the firearm at a person to intimidate a person only, however, the bullet hit the vital organ of the victim that resulted to his death, the crime committed is either homicide or murder. The moment the victim dies, intent to kill is presumed.

**INFANTICIDE
ART. 255**

Infanticide (BAR 2006)

It is the killing of any child less than 3 days old or 72 hours of age, whether the killer is the parent or grandparent, any relative of the child, or a stranger.

NOTE: Art. 255 does not provide a penalty for infanticide. If the killer is the mother, or father, or a legitimate grandparent, although the crime is still infanticide, the penalty, is that of parricide.

If the offender is not so related to the child, although the crime is still infanticide, the penalty corresponding to murder shall be imposed.

Regardless, the penalty for murder and parricide is the same.

Elements

1. A child was killed;
NOTE: The child must be born alive and fully developed, that is, it can sustain an independent life.
2. Deceased child was less than 3 days old or less than 72 hours of age; and
3. Accused killed the said child.

NOTE: If the child is born dead, or if the child is already dead, infanticide is not committed.

Although the child is born alive if it could not sustain an independent life when it was killed there is no infanticide.

Effect if the crime is committed for concealing of dishonor as an exculpatory circumstance

Concealment of dishonor is not an exculpatory circumstance in the crime of infanticide. It merely lowers the penalty to:

- a. prison mayor – if committed by the mother
- b. reclusion temporal – if committed by the grand parents

Only the mother and maternal grandparents of the child are entitled to the mitigating circumstance of concealing dishonor. The mother who claims concealing dishonor must be of good reputation.

Infanticide vis-à-vis parricide if the offender is the blood relative, e.g. parent of the child

BASIS	INFANTICIDE	PARRICIDE
<i>As to age of victims</i>	The age of the victim is less than three days old.	The victim is at least three days old.
<i>As to liability in conspiracy</i>	If done in conspiracy with a stranger, both the parent and the co-conspirator are liable for infanticide.	The co-conspirator is liable for murder because of the absence of relationship.
<i>Concealment as mitigating circumstances</i>	Concealment of dishonor in killing the child is mitigating.	Concealment of dishonor in killing the child is not a mitigating circumstance

NOTE: In both, there is intent to kill the child.

Q: Suppose the child is abandoned without any intent to kill and death results as a consequence, what crime is committed?

A: The crime committed is abandonment under Art. 276 (Abandoning a Minor) and not infanticide.

**INTENTIONAL ABORTION
ART. 256**

Abortion (BAR 1994)

It is the willful killing of the fetus in the uterus, or the violent expulsion of the fetus from the maternal womb that results in the death of the fetus.

NOTE: The basis of this article is Art. 2, Sec. 12 of the Constitution, which states that “The State shall

equally protect the life of the mother and the life of the unborn *from conception*” (Sec. 12, Art. II, Constitution).

The crime of intentional abortion is committed in three ways

1. By using any violence upon the person of the pregnant woman;
2. By administering drugs or beverages upon such pregnant woman without her consent; or
3. By administering drugs or beverages with the consent of the pregnant woman.

Elements

1. There is a pregnant woman;
2. Violence is exerted, or drugs or beverages administered, or that the accused otherwise acts upon such pregnant woman;
3. As a result of the use of violence or drugs or beverages upon her, or any other act of the accused, the fetus dies, either in the womb or after having been expelled therefrom; and
4. Abortion is intended.

NOTE: In intentional abortion, the offender should know that the woman is pregnant because the very intention is to cause an abortion.

Persons liable for intentional abortion

1. The person who actually caused the abortion under Art. 256; and
2. The pregnant woman if she consented under Art. 258.

Abortion is not a crime against the woman but against the fetus. The offender must know of the pregnancy because the particular criminal intention is to cause an abortion. As long as the fetus dies as a result of the violence used or drugs administered, the crime of abortion exists, even if the fetus is over or less is in *full term* (*Viada as cited in Reyes, 2008*).

Abortion vis-à-vis infanticide

BASIS	ABORTION	INFANTICIDE
<i>As to victim</i>	The victim is not viable but remains to be a fetus.	The victim is already a person less than 3 days old or 72 hours and is viable or capable of living separately from



		the mother's womb.
As to entitlement of mitigating circumstances	Only the pregnant woman is entitled to mitigation if the purpose is to conceal dishonor.	Both the mother and maternal grandparents of the child are entitled to the mitigating circumstance of concealing the dishonor.

Even if the child is was expelled prematurely and deliberately is alive at birth, the offense is abortion due to the fact that a fetus with an intrauterine life of 6 months is not viable. (People vs. Paycana, 551 SCRA 657, 667 citing *US vs. Vedra*, 12 Phil 96 [1909])

Q: Suppose the mother as a consequence of abortion suffers death or physical injuries, what crime is committed?

A: The crime is complex crime of murder or physical injuries with abortion.

Q: If despite the employment of sufficient and adequate means to effect abortion, the fetus that is expelled from the maternal womb is viable but unable to sustain life outside the maternal womb, what crime is committed?

A: The crime is frustrated abortion because abortion is consummated only if the fetus dies inside the womb.

NOTE: But if the expelled fetus could sustain life outside the mother's womb, the crime is already infanticide.

Q: If the abortive drug used is a prohibited or regulated drug under the Dangerous Drugs Act, what are the crimes committed?

A: The crimes committed are intentional abortion and violation of RA 9165.

UNINTENTIONAL ABORTION ART. 257

Elements

1. There is a pregnant woman;
2. Violence is used upon such pregnant woman without intending an abortion;
3. Violence is intentionally exerted; and

4. As a result of the violence exerted, the fetus dies either in the womb or after having been expelled therefrom. **(BAR 2015)**

Illustration: Unintentional abortion requires physical violence inflicted deliberately and voluntarily by a third person upon the person of the pregnant woman. Hence, if A pointed a gun at a pregnant lady, who became so frightened, causing her abortion, he is not liable for unintentional abortion, as there was no violence exerted. If he intended the abortion however, the crime committed is intentional abortion.

The force or violence must come from another. Mere intimidation is not enough unless the degree of intimidation already approximates violence.

Q: Is the crime of unintentional abortion committed if the pregnant woman aborted because of intimidation?

A: NO. The crime committed is not unintentional abortion because there is no violence. The crime committed is light threats.

NOTE: If violence was employed on the pregnant woman by a third person, and as a result, the woman and the fetus died, there is complex crime of homicide with unintentional abortion.

Q: Suppose the pregnant woman employed violence to herself specifically calculated to bring about abortion, what crime is committed?

A: The woman is liable for intentional abortion under Art. 258.

Q: What is the criminal liability, if any, of a pregnant woman who tried to commit suicide by poison, but she did not die and the fetus in her womb was expelled instead? (BAR 1994, 2012)

A: The woman who tried to commit suicide incurs no criminal liability for the result not intended. In order to incur criminal liability for the result not intended, one must be committing a felony, and suicide is not a felony. Unintentional abortion is not committed since it is punishable only when caused by violence and not by poison. There is also no intentional abortion since the intention of the woman was to commit suicide and not to abort the fetus.

Q: Can Unintentional abortion be committed through Negligence?

A: YES. Unintentional abortion is a felony committed by *dolo* or deliberate intent. But it can be committed by means of *culpa*. However, the *culpa* lies not in the aspect of abortion but on the violence inflicted on the pregnant woman. Thus, there can be a crime of **Reckless Imprudence resulting in Unintentional Abortion**.

**ABORTION PRACTICED BY THE WOMAN
HERSELF OR BY HER PARENTS
ART. 258**

Elements

1. There is a pregnant woman who has suffered abortion;
2. Abortion is intended; and
3. Abortion is caused by:
 - a. The pregnant woman herself;
 - b. Any other person, with her consent; or
 - c. Any of her parents, with her consent for the purpose of concealing her dishonor.

NOTE: Under a and c above, the woman is liable under Art. 258 while the third person under b is liable under Art. 256.

Mitigation of liability when the purpose of abortion is to conceal dishonor

The liability of the pregnant woman is mitigated if the purpose for abortion is to conceal her dishonor. However, if it is the parents who caused the abortion for the purpose of concealing their daughter's dishonor, there is no mitigation, unlike in infanticide.

**ABORTION PRACTICED BY PHYSICIAN OR
MIDWIFE AND DISPENSING OF ABORTIVES
ART. 259**

Elements of this crime as to the physician or midwife

1. There is a pregnant woman who has suffered abortion;
2. Abortion is intended;
If abortion was not intended or was a result of a mistake, no crime is committed. If the woman is not really pregnant, an impossible crime is committed.
3. The offender must be a physician or midwife who causes or assists in causing the abortion; and

4. Said physician or midwife takes advantage of his or her scientific knowledge or skill.

What is THERAPEUTIC ABORTION?

It is an abortion caused by a physician to save the life of a mother. The physician is not criminally liable. (*Estrada, 2011*)

Elements of this crime as to the pharmacists

1. Offender is a pharmacist;
2. There is no proper prescription from a physician; and
3. Offender dispenses an abortive.

As to the pharmacist, the crime is consummated by dispensing an abortive without proper prescription from a physician. It is not necessary that the abortive is actually used.

Q: Suppose the abortion was performed by a physician without medical necessity to warrant such abortion and the woman or her husband had consented. Is the physician liable for abortion under Art. 259?

A: YES. The consent of the woman or her husband is not enough to justify abortion.

**RESPONSIBILITY OF PARTICIPANTS IN A DUEL
ART. 260**

Duel

It is a formal or regular combat previously consented between two parties in the presence of two or more seconds of lawful age on each side, who make the selection of arms and fix all the other conditions of the fight to settle some antecedent quarrels.

Punishable acts

1. Killing one's adversary in a duel;
2. Inflicting upon such adversary physical injuries; and
3. Making a combat although no physical injuries have been inflicted.

A mere fight as a result of an agreement is not necessarily a duel because a duel implies an agreement to fight under determined conditions and with the participation and intervention of seconds who fixed the conditions.

Illustration: If the accused and the deceased, after a verbal heated argument in the bar, left the place at the same time and pursuant to their agreement, went to the plaza to fight each other to death with knives which they bought on the way, the facts do not constitute the crime of duel since there was no seconds who fixed the conditions of the fight in a more or less formal manner. If one is killed, the crime committed is homicide.

Persons liable

Persons who killed or inflicted physical injuries upon his adversary, or both combatants will be liable as principals; while the seconds will be liable as accomplices.

Seconds

The persons who make the selection of the arms and fix the other conditions of the fight.

Applicability of self-defense

Self-defense cannot be invoked if there was a pre-concerted agreement to fight, but if the attack was made by the accused against his opponent before the appointed place and time, there is an unlawful aggression, hence self-defense can be claimed.

**CHALLENGING TO A DUEL
ART. 261**

Punishable acts

1. Challenging another to a duel;
2. Inciting another to give or accept a challenge to a duel; and
3. Scoffing at or decrying another publicly for having refused to accept a challenge to fight a duel.

NOTE: The punishable act is to challenge to a duel not challenge to a fight because if it is the latter, the crime would be light threats under Art. 285(2).

Q: Suppose one challenges another to a duel by shouting "Come down, Olympia, let us measure your prowess. We will see whose intestines will come out. You are a coward if you do not come down," is the crime of challenging to a duel committed?

A: NO. What is committed is the crime of light threats under Art. 285 (*People v. Tacomoy, G.R. No. L-4798, July 16, 1951*).

Persons liable in this crime

The challenger and the instigators.

PHYSICAL INJURIES

**MUTILATION
ART. 262**

Mutilation

It is the chopping or the clipping off of some parts of the body which are not susceptible to growth again.

Kinds of mutilation

1. Intentionally mutilating another by depriving him, either totally or partially, of some essential organ for reproduction.

Elements:

- a. There must be a castration, which is mutilation of organs necessary for generation, such as the penis or ovarium; and
- b. The mutilation is caused purposely and deliberately, which is to deprive the offended party of some essential organ for reproduction.

Intentionally depriving the victim of the reproductive organ does not mean necessarily the cutting off of the organ or any part thereof. It suffices that it is rendered useless.

2. Intentionally making other mutilation, that is, by lopping or clipping off of any part of the body of the offended party, other than the essential organ for reproduction, to deprive him of that part of his body.

In the first kind of mutilation, the castration must be made purposely. Otherwise, it will be considered as mutilation of the second kind.

Intention in mutilation

Mutilation must always be intentional. Thus, it cannot be committed through criminal negligence.

There must be no intent to kill otherwise the offense is attempted or frustrated homicide or murder as the case may be.

Q: Suppose there is no intent to deprive the victim of the particular part of the body, what is the crime committed?

A: The crime is only serious physical injury.

NOTE: Cruelty, as understood in Art. 14 (21) is inherent in mutilation and in fact, that is the only felony, where said circumstance is an integral part and is absorbed therein. If the victim dies, the crime is murder qualified by cruelty but the offender may still claim and prove that he had no intention to commit so grave a wrong.

SERIOUS PHYSICAL INJURIES ART. 263

How the crime of serious physical injuries is committed

1. Wounding; **(BAR 1993)**
2. Beating; **(BAR 1995)**
3. Assaulting; **(BAR 1993)**, or
4. Administering injurious substance. **(BAR 1992)**

Instances considered as the crime of serious physical injuries

1. When the injured person becomes insane, imbecile, impotent, or blind in consequence of the physical injuries inflicted.

Impotence includes inability to copulate and sterility.

Blindness requires loss of vision of *both* eyes. Mere weakness in vision is not contemplated.

2. When the injured person:
 - a. Loses the use of speech or the power to hear or to smell, or loses an eye, a hand, a foot, an arm or a leg; or
 - b. Loses the use of any such member; or
 - c. Becomes incapacitated for the work in which he was habitually engaged in as a consequence of the physical injuries inflicted.

Loss of hearing must involve *both* ears. Otherwise, it will be considered as serious physical injuries under par. 3. Loss of the power to hear in the right ear is merely considered as loss of use of some other part of the body.

3. When the injured:
 - a. Becomes deformed;
 - b. Loses any other member of his body;
 - c. Loses the use thereof; or
 - d. Becomes ill or incapacitated for the performance of the work in which he was habitually engaged in for more than 90 days, as a consequence of the physical injuries inflicted.

NOTE: In par. 2 and 3, the offended party must have a vocation or work at the time of injury.

4. When the injured person becomes ill or incapacitated for labor for more than 30 days (but must not be more than 90 days), as a result of the physical injuries inflicted.

When the category of the offense of serious physical injuries depends on the period of the illness or incapacity for labor, there must be evidence of the length of that period. Otherwise, the offense will be considered as slight physical injuries.

Nature of physical injuries

The crime of physical injuries is a formal crime because it is penalized on the basis of the gravity of the injury sustained. What is punished is the consequence and not the stage of execution. Hence, it is always consummated. It cannot be committed in the attempted and frustrated stage.

Q: If the offender repeatedly uttered "I will kill you" but he only keeps on boxing the offended party and injuries resulted, what is the crime committed?

A: The crime is only physical injuries not attempted or frustrated homicide.

Determining intent to kill

Intent to kill must be manifested by overt acts. It cannot be manifested by oral threats.

Requisites of deformity

1. Physical ugliness;
2. Permanent and definite abnormality; and
3. Conspicuous and visible.

NOTE: Once physical injuries resulted to deformity, it is classified as serious physical injuries.

Q: X threw acid on the face of Y and, were it not for the timely medical attention, a deformity would have been produced on the face of Y. After the plastic surgery, Y became more handsome than before the injury. What crime was committed? In what stage was it committed?

A: The crime is serious physical injuries because the problem itself states that the injury would have produced a deformity. The fact that the plastic surgery removed the deformity is immaterial because what is considered is not the artificial treatment but the natural healing process.

Qualifying circumstances of serious physical injuries

1. If it is committed by any of the persons referred to in the crime of parricide; or
2. If any of the circumstances qualifying murder attended its commission.

Illustration: A father who inflicts serious physical injuries upon his son will be liable for qualified serious physical injuries.

NOTE: The qualified penalties are not applicable to parents who inflict serious physical injuries upon their children by excessive chastisement.

Physical injuries vis-à-vis Mutilation

Mutilation must have been caused purposely and deliberately to lop or clip off some part of the body so as to deprive the offended party of such part of the body. This intention is absent in other kinds of physical injuries.

PHYSICAL INJURIES	MUTILATION
No special intention to clip off some part of the body so as to deprive the offended party of such part.	There is special intention to clip off some part of the body so as to deprive him of such part.

Physical injuries vis-à-vis attempted or frustrated homicide

PHYSICAL INJURIES	ATTEMPTED OR FRUSTRATED HOMICIDE
The offender inflicts physical injuries.	Attempted homicide may be committed even if no physical injuries are inflicted.
Offender has no intention to kill the offended party.	The offender has intent to kill the offended party.

**ADMINISTERING INJURIOUS SUBSTANCES OR BEVERAGES
ART.264**

Elements

1. The offender inflicted serious physical injuries upon another;
2. It was done by knowingly administering to him any injurious substances or beverages or by taking advantage of his weakness of mind or credulity; and

To administer an injurious substance or beverage means to direct or cause said substance or beverage to be taken orally by the injured person, who suffered serious physical injuries as a result.

3. He had no intent to kill.

**LESS SERIOUS PHYSICAL INJURIES
ART. 265**

Elements (BAR 1994, 1998, 2009)

1. Offended party is incapacitated for labor for 10 days or more (but not more than 30 days), *or shall require* medical attendance for the same period of time; and

NOTE: The disjunctive “or” above means that it is either incapacity for work for 10 days or more *or* the necessity of medical attendance for an equal period which will make the crime of less serious physical injuries.

In the absence of proof as to the period of the offended party’s incapacity for labor *or* required medical attendance, the offense committed is only slight physical injuries. The phrase “*shall require*” refers to the period of *actual* medical attendance.

2. Physical injuries must not be those described in the preceding articles.

If a wound required medical attendance for only 2 days, yet the injured was prevented from attending to his ordinary labor for a period of twenty-nine days, the physical injuries are denominated as less serious (*US v. Trinidad*, 4 Phil. 152).

Qualifying circumstances of less serious physical injuries

1. When there is manifest intent to insult or offend the injured person;
2. When there are circumstances adding ignominy to the offense;
3. When the victim is the offender's parents, ascendants, guardians, curators, or teachers; or
4. When the victim is a person of rank or person in authority, provided the crime is not direct assault.

NOTE: A fine not exceeding P500, in addition to *arresto mayor* shall be imposed for less serious physical injuries in cases (1) and (2) above, while a higher penalty is imposed when the victim are those mentioned in (3) and (4).

Serious physical injury vis-à-vis less serious physical injury

BASIS	SERIOUS PHYSICAL INJURIES	LESS SIRIOUS PHYSICAL INJURIES
<i>As to capacity of injured party</i>	The injured person becomes ill or incapacitated for labor for more than 30 days but not more than 90 days.	The offended party is incapacitated for labor for 10 days or more but not more than 30 days, or needs medical attendance for the same period.
<i>Importance of Medical Assistance</i>	Medical attendance is not important in serious physical injuries.	There must be a proof to the period of the required medical attendance.

**SLIGHT PHYSICAL INJURIES AND MALTREATMENT
ART. 266**

Kinds of slight physical injuries and maltreatment (BAR 1990, 1994, 2003)

1. Physical injuries which incapacitated the offended party for labor from 1 to 9 days, *or* required medical attendance during the same period;
2. Physical injuries which did not prevent the offended party from engaging in his habitual work *or* which did not require medical attendance; or
3. Ill-treatment of another by deed without causing any injury.

Slapping the offended party is a form of ill-treatment which is a form of slight physical injuries.

Q: A disagreement ensued between Cindy and Carina which led to a slapping incident. Cindy gave twin slaps on Carina's beautiful face. What is the crime committed by Cindy?

A:

1. *Slander by deed* – if the slapping was done to cast dishonor to the person slapped.
2. *Slight physical injuries by ill-treatment* – if the slapping was done without the intention of casting dishonor, or to humiliate or embarrass the offended party out of a quarrel or anger.

Presumptions in Art. 266

1. In the absence of proof to the period of the offended party's incapacity for labor or of the required medical attendance, the crime committed is presumed as slight physical injuries.
2. When there is no evidence to establish the gravity or duration of actual injury or to show the causal relationship to death, the offense is slight physical injuries.

Q: Suppose the charge contained in the information filed was for slight physical injuries because it was believed that the wound suffered would require medical attendance for eight (8) days only, but during preliminary investigation it was found out that the healing would require more than thirty (30) days, should an amendment of the charge be allowed?

A: YES. The supervening event can still be the subject of amendment or of a new charge without placing the accused in double jeopardy (*People v. Manolong, G.R. No. L-2288, March 30, 1950*).

**RAPE
ARTS. 266-A, 266-B, 266-C AND 266-D AND
RA 8353**

Kinds of rape under RA 8353

1. *The traditional concept under Art. 335* – carnal knowledge with a woman against her will. The offended party is always a woman and the offender is always a man.
2. *Sexual assault* – committed with an instrument or an object or use of the penis with penetration of the mouth or anal orifice. The offended party or offender can either be a man or a woman, that is, if the woman or a man uses an instrument in the anal orifice of a male, she or he can be liable for rape.

A violation of the body orifices by the fingers is within the expanded definition of rape under RA 8353. Insertion of the finger into the female genital is rape through sexual assault (*People v. Campuhan, G.R. No. 129433, March 30, 2000*).

However, there should be evidence of at least the slightest penetration of the sexual organ and not merely a brush or graze of its surface (*People v. Dela Cruz, G.R. No. 180501, December 24, 2008*).

Elements of rape by a man who shall have carnal knowledge of a woman

1. Offender is a man;
2. Offender had carnal knowledge of the woman; and
3. Such act is accomplished under any of the following circumstances:
 - a. Through force, threat or intimidation; **(BAR 1992)**
 - b. When the offended party is deprived of reason or is otherwise unconscious;
 - c. By means of fraudulent machination or grave abuse of authority; or
 - d. When the offended party is under 12 years of age or is demented, even though none of the above circumstances mentioned above be present. **(BAR 1995)**

Q: While still intoxicated and asleep, "AAA" felt someone kiss her vagina. At first, she thought it was her boyfriend Randy who did it. She tried to push him away but failed to stop him.

Indeed, in no time at all Caga succeeded in mounting her and in penetrating her private parts with his penis.

Caga argues that while the Information alleged that force, violence, and intimidation were employed to consummate the alleged rape, the prosecution's evidence failed to establish the existence thereof. He claims that "AAA" did not offer any resistance against his sexual advances, "because she thought that it was her boyfriend (Randy) who was then making love with her."

Is Caga liable for rape?

A: Yes. Caga's contention has no merit because the case falls under the second paragraph of rape: "when the offended party is deprived of reason or is otherwise unconscious." It is altogether immaterial that the prosecution's evidence failed to establish the presence of physical force, threat, or intimidation because, as the evidence at bar shows, Caga raped an unconscious and extremely intoxicated woman - a fact that was duly alleged in the Information and duly established by the prosecution's evidence during the trial. (*People vs. Caga, G.R. No. 206878, August 8, 2016*)

Elements of rape by sexual assault (BAR 2005)

1. Offender commits an act of sexual assault;
2. The act of sexual assault is committed by any of the following means:
 - a. By inserting his penis into another person's mouth or anal orifice, or
 - b. By inserting any instrument or *object* into the genital or anal orifice of another person
3. The act of sexual assault is accomplished under any of the following circumstances:
 - a. By using force or intimidation, or
 - b. When the woman is deprived of reason or otherwise unconscious, or
 - c. By means of fraudulent machination or grave abuse of authority, or
 - d. When the woman is under 12 years of age or demented.

Rape by sexual assault is not necessarily included in rape through sexual intercourse (*People v. Bon, G.R. No. 166401, October 30, 2006*) unlike acts of lasciviousness.

When the offender in rape has an ascendancy or influence on the offended party, it is not necessary that the latter put up a determined resistance.

Q: AAA went to the bedroom to rest after eating the spaghetti brought by his father Benjamin Soria. Thereafter, Soria also entered the room and positioned himself on top of AAA, took off her clothes and inserted his penis into her vagina. AAA felt intense pain from her breast down to her vagina and thus told her father that it was painful. At that point, appellant apologized to his daughter, stood up, and left the room. This whole incident was witnessed by "AAA's" brother, "BBB". The pain persisted until "AAA's" vagina started to bleed. She thus told her aunt about it and they proceeded to a hospital for treatment. Her mother was also immediately informed of her ordeal. Dr. Supe examined "AAA", which examination yielded the following result: "the subject is in virgin state physically. There are no external signs of application of any form of physical trauma." On the other hand, Soria averred that "AAA" was unsure whether it was indeed Soria's penis which touched her labia and entered her organ since she was pinned down by the latter's weight. What crime/s has/have been committed by Soria, if there is any?

A: He is liable only for rape by sexual assault. In determining whether appellant is guilty of rape through sexual intercourse, it is essential to establish beyond reasonable doubt that he had carnal knowledge of "AAA". There must be proof that his penis touched the labia of "AAA" or slid into her female organ, and not merely stroked the external surface thereof. In this case, "AAA" was unsure whether it was indeed appellant's penis which touched her labia and entered her organ since she was pinned down by the latter's weight, her father having positioned himself on top of her while she was lying on her back. However, she categorically testified that appellant inserted something into her vagina. The insertion even caused her vagina to bleed necessitating her examination at the hospital. It was clearly established that appellant committed an act of sexual assault on "AAA" by inserting an instrument or object into her genital. We find it inconsequential that "AAA" could not specifically identify the particular instrument or object that was inserted into her genital. What is important and relevant is that indeed something was inserted into her vagina. Hence, appellant committed the crime of rape by sexual assault. (*People of the Philippines v. Benjamin Soria*, November 14, 2012)

Old Anti-Rape Law vis-à-vis RA 8353

OLD ANTI-RAPE LAW	RA 8353
Crime against chastity	Crime against persons
May be committed by a man against a woman only.	Under the 2nd type, sexual assault may be committed by any person against any person.
Complaint must be filed by the woman or her parents, grandparents or guardian if the woman was a minor or incapacitated. (Private Crime)	May be prosecuted even if the woman does not file a complaint. (Public Crime)
Marriage of the victim with one of the offenders benefits not only the principal but also the accomplices and accessories.	Marriage extinguishes the penal action only as to the principal (the person who married the victim), and cannot be extended to co-principals in case of multiple rape.
Marital rape not recognized.	Marital rape recognized (BAR 1995).

Q: Geronimo, a teacher, was tried and convicted for 12 counts of rape for the sexual assault, he, on several occasions, committed on one of his male students by inserting his penis in the victim's mouth. On appeal, Geronimo contends that the acts complained of do not fall within the definition of rape as defined in the RPC, particularly that rape is a crime committed by a man against a woman. Is Geronimo's contention correct?

A: NO. Rape may be committed notwithstanding the fact that persons involved are both males. RA 8353 provides that an act of sexual assault can be committed by any person who inserts his penis into the mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person. The law, unlike rape under Art. 266-A, has not made any distinction on the sex of either the offender or the victim. Neither must the courts make such distinction (*Ordinario v. People*, G.R. No. 155415, May 20, 2004).



Amount of force necessary to consummate the crime of rape

Jurisprudence firmly holds that the force or violence required in rape cases is relative; it does not need to be overpowering or irresistible; it is present when it allows the offender to consummate his purpose (*People v. Funesto y Llospardas, G.R. No. 182237, August 3, 2011*).

No crime of frustrated rape

The slightest penetration of penis into the labia of the female organ consummates the crime of rape. However, mere touching alone of the genitals and *mons pubis* or the pudendum can only be considered as attempted rape, if not acts of lasciviousness.

“Touching” in rape

In *People v. Campuhan*, it was held that *touching* when applied to rape cases does not simply mean mere epidermal contact, stroking or grazing of organs, a slight brush or a scrape of the penis on the external layer of the victim’s vagina, or the *mons pubis*. There must be sufficient and convincing proof that the penis indeed touched the labias or slid into the female organ, and not merely stroked the external surface thereof, for an accused to be convicted of consummated rape. Thus, a grazing of the surface of the female organ or touching the *mons pubis* of the pudendum is not sufficient to constitute consummated rape. Absent any showing of the slightest penetration of the female organ, *i.e.*, touching of either *labia* of the *pudendum* by the penis, there can be no consummated rape; at most, it can only be attempted rape, if not acts of lasciviousness (*People v. Butiong, G.R. No. 168932, October 19, 2011*).

Effects of the reclassification of rape into a crime against person (BAR 1991, 1993)

1. The procedural requirement of consent of the offended party to file the case is no longer needed because this is now a public crime, unlike when it was still classified as a crime against chastity; and
2. There is now an impossible crime of rape because impossible crimes can only be committed against persons or property.

Effects of pardon on the criminal liability of the accused charged with rape (BAR 2002)

1. The offended woman may pardon the offender through a subsequent valid marriage, the effect of which would be the extinction of the offender’s liability. In such case, it is the marriage that extinguishes the offender’s liability, not because of the pardon which extinguished criminal liability only if granted before the institution of the criminal case in court; or
2. Similarly, the legal husband maybe pardoned by forgiveness of the wife provided that the marriage is not *void ab initio* (*Art. 266-C*).

Under the new law, the husband may be liable for rape, if his wife does not want to have sex with him. It is enough that there is indication of any amount of resistance as to make it rape. (*People v. Lumawan, G.R. No. 187495, April 21, 2014*)

Effect of Affidavit of Desistance in the crime of rape

Rape is no longer a crime against chastity for it is now classified as a crime against persons. In effect, rape may now be prosecuted *de officio*; a complaint for rape commenced by the offended party is no longer necessary for its prosecution. Consequently, rape is no longer considered a private crime which cannot be prosecuted, except upon a complaint filed by the aggrieved party. Hence, pardon by the offended party of the offender in the crime of rape will not extinguish the offender’s criminal liability. Moreover, an Affidavit of Desistance even when construed as a pardon in the erstwhile “private crime” of rape is not a ground for the dismissal of the criminal cases, since the actions have already been instituted. To justify the dismissal of the complaints, the pardon should have been made prior to the institution of the criminal actions (*People v. Bonaagua, G.R. No. 188897, June 6, 2011, People v. Borce, G.R. No. 189579, September 12, 2011*).

Absence of spermatozoa does not negate the commission of rape

The basic element of rape is carnal knowledge or sexual intercourse, not ejaculation. Carnal knowledge is defined as “the act of a man having sexual bodily connections with a woman.” This explains why the slightest penetration of the female genitalia consummates the rape (*People v. Butiong, G.R. No. 168932, October 19, 2011*).

Q: Accused was charged and convicted of the crime of rape of a minor. He claims that his

guilt was not proven because there was no hymenal laceration therefore there was no evidence showing that he had carnal knowledge of the victim. Is his defense tenable?

A: NO. Proof of hymenal laceration is not an element of rape. An intact hymen does not negate a finding that the victim was raped. Penetration of the penis by entry into the lips of the vagina, even without laceration of the hymen, is enough to constitute rape, and even the briefest of contact is deemed rape (*People v. Crisostomo*, G.R. No. 183090, November 14, 2011).

Q: One of Butiong's contentions is that having sexual intercourse with AAA, a mental retardate, did not amount to a rape, because it could not be considered as carnal knowledge of a woman deprived of reason or of a female under twelve years of age as provided under Article 266-A of the Revised Penal Code, as amended. Is he correct?

A: NO. Rape is essentially a crime committed through force or intimidation, that is, *against the will of the female*. It is also committed without force or intimidation when carnal knowledge of a female is alleged and shown to be *without her consent*. It should no longer be debatable that rape of a mental retardate falls under paragraph 1(b), of Article 266-A, because the provision refers to a rape of a female "deprived of reason," a phrase that refers to mental abnormality, deficiency or retardation (*People v. Butiong*, G.R. No. 168932, October 19, 2011).

Instances to consider the crime as qualified rape

1. When by reason or on occasion of the rape, a homicide is committed. **(BAR 1998, 2009)**
2. When the victim is under 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the victim.

NOTE: A step-brother or step-sister relationship between the offender and the offended party cannot elevate the crime to qualified rape because they are not related either by blood or affinity. The enumeration is exclusive. Hence, the common law husband of the victim's grandmother is not included.

3. When the victim is under the custody of the police or military authorities or any law enforcement or penal institution.
4. When rape is committed in full view of the husband, parent, any of the children or other relatives within the third civil degree of consanguinity.
5. When the victim is engaged in a legitimate religious vocation or calling and is personally known to be such by the offender before or after the commission of the crime.
6. When the victim is a child below 7 years old.
7. When the offender knows that he is inflicted with HIV/AIDS or any other sexually transmissible disease and the virus or disease is transferred to the victim.
8. When committed by any member of the AFP or paramilitary units thereof or the PNP or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime.
9. When by reason or on occasion of the rape, the victim has suffered permanent physical mutilation or disability.
10. When the offender knew of the pregnancy of the offended party at the time of the commission of the rape.
11. When the offender knew of the mental disability, emotional disorder, and/or physical handicap of the offended party at the time of the commission of the crime (Art. 266-B).

Q: At around two p.m., AAA was sleeping inside their house with her two-year old sister and three-year old brother. Rubio, AAA's father, approached AAA and removed her shorts and panty. AAA tried to push him away but he was too strong, and he succeeded in inserting his penis inside her vagina. AAA continued resisting despite being afraid that Rubio would hurt her. After some time, Rubio ejaculated outside her vagina. Is Rubio guilty of qualified rape?

A: YES. The case falls under Article 266-B (2). Being AAA's father, Rubio is presumed to have employed force and/or intimidation. The fear towards her father was more than enough to intimidate her to submit to his lewd advances without shouting for help (*People v. Rubio*, G.R. No. 195239, March 7, 2012).

Q: Paolo and Marga are husband and wife. Marga refuses to have sexual intercourse with her husband so the latter used force and intimidation against her. Paolo was able to

penetrate his penis inside Marga's vagina. Is Paolo guilty of rape?

A: YES. A woman is no longer the chattel-antiquated practices labeled her to be. A husband who has sexual intercourse with his wife is not merely using a property, he is fulfilling a marital consortium with a fellow human being with dignity equal to that he accords himself. He cannot be permitted to violate this dignity by coercing her to engage in a sexual act without her full and free consent (*People v. Jumawan, G.R. No. 187495, April 21, 2014*).

Q: AAA, a 67-year-old woman, was fast asleep when Bill covered her mouth, threatened her with a knife and told her not to scream because he will have sexual intercourse with her.

Thereafter, he removed AAA's underwear. However, his penis was not yet erected so he toyed with AAA's sexual organ by licking it. He then made his way up and tried to suck AAA's tongue. Once done, Bill held his penis and inserted it to AAA's vagina. In his defense, bill argued that during the entire alleged incident AAA never reacted at all. Is Bill guilty of rape?

A: Yes, Bill is guilty of rape. AAA was already 67 years of age when she was raped in the dark by Bill who was armed with a knife, a woman of such advanced age could only recoil in fear and succumb into submission. In any case, with such shocking and horrifying experience, it would not be reasonable to impose upon AAA any standard form of reaction. Different people react differently to a given situation involving a startling occurrence (*People v. Jastiva, G.R. No. 199268, February 12, 2014*).

Q: AAA has mental retardation. While she was playing, Jerry saw her and asked her to go with her because he would give her a sugar cane. Jerry brought "AAA" to his house and while inside, 'he removed her panty, and then inserted his penis into her vagina and he got the knife and then he took a sugar cane and then he gave it to her and then she went home. Moreover, Jerry argues that the testimony of "AAA" deserves no credence because she was incapable of intelligently making known her perception to others by reason of her mental disability. Is Jerry liable only for simple rape?

A: Yes, Jerry is guilty of simple rape only with a penalty of reclusion perpetua pursuant to Article

266-B, par. 1 of the RPC. AAA's mental disability could not be considered as a qualifying circumstance here because the Information failed to allege that appellant knew of such mental condition at the time of the commission of the crime. The mere fact that the rape victim is a mental retardate does not automatically merit the imposition of the death penalty. Under Article 266-B (10) of the Revised Penal Code, knowledge by the offender of the mental disability, emotional disorder, or physical handicap at the time of the commission of the rape is the qualifying circumstance that sanctions the imposition of the death penalty. As such this circumstance must be formally alleged in the information and duly proved by the prosecution. (*People of the Philippines v. Jerry Obogne, GR. No. March 24, 2014*)

Impregnation of the woman not an element of rape

Q: On September 22, 2001, XXX, a 16-year old girl, and her uncle Abat went to the poblacion to buy medicine, with permission of XXX's parents. Instead of proceeding to the poblacion, Abat drove to another barangay. Upon reaching the barangay, Abat dragged XXX inside a deserted nipa hut. Abat undressed himself then laid XXX down on a bamboo bed. Abat inserted his penis into XXX's vagina. XXX tried to push Abat away but the latter threatened to kill her and her family if she would tell anybody about the "act". Abat made a push and pull movement, after which he ejaculated. The following day, Abat brought XXX home. XXX told her parents about the incident. Abat was charged with rape. On April 24, 2002, XXX gave birth to a baby girl. Abat contends that if it were true that he raped XXX in September 2001, then the baby girl XXX gave birth to in April 2002 would have been born prematurely; since the baby appeared to be healthy, she could not have been the result of the alleged rape in September 2001. Is Abat's contention correct?

A: No. In any event, the impregnation of a woman is not an element of rape. XXX's pregnancy, therefore, is totally immaterial in this case. For the conviction of an accused, it is sufficient that the prosecution establish beyond reasonable doubt that he had carnal knowledge of the offended party and that he had committed such act under any of the circumstances under Article 266-A of the RPC (*People v. Abat, G.R. No. 202704, April 2, 2014*).

Marital Rape**Q: Can rape be committed by a husband?**

A: Yes, this is recognized in Article 266-C which provides that in case it is the legal husband who is the offender, the subsequent forgiveness by the wife as the offended party shall extinguish the criminal action or penalty. This is known as marital rape.

Incestuous rape

It refers to rape committed by an ascendant of the offended woman.

In incestuous rape of a minor, proof of force and violence exerted by the offender are not essential. Moral ascendancy or parental authority of the accused over the offended party takes the place of violence.

Q: "XXX", a 13-year-old girl, testified that her father, De Chavez, raped her. Her sister, "YYY" saw what happened and testified as well. Dr. Roy Camarillo, the Medico-Legal Officer who conducted laboratory examination on "XXX", found the presence of deep healed lacerations on "XXX's" organ. De Chavez contends that the prosecution was not able to prove the accusations against him beyond reasonable doubt. Is his contention correct?

A: NO. His contention is not correct. There is sufficient basis to conclude the existence of carnal knowledge when the testimony of a rape victim is corroborated by the medical findings of the examining physician as "lacerations, whether healed or fresh, are the best physical evidence of forcible defloration." In this case, the victim's testimony is corroborated not only by her sister but also by the medical findings of the examining physician, who testified that the presence of deep healed lacerations on the victim's genitalia, is consistent with the dates the alleged sexual acts were committed. (PEOPLE OF THE PHILIPPINES v. EMILIANO DE CHAVEZ, GR. No. 218427, 31 January, 2018)

Statutory rape

Sexual intercourse with a girl below 12 years old is *statutory rape* (People v. Espina, G.R. No. 183564, June 29, 2011).

Elements of statutory rape

1. That the offender had carnal knowledge of the victim; and
2. That the victim is below twelve (12) years old (*People v. Apattad*, G.R. No. 193188, August 10, 2011).
3. When the woman is under 12 years of age or is demented, sexual intercourse with her is always rape, even if the sexual intercourse was with her consent. This is because the law presumes that the victim, on account of her tender age, does not and cannot have a will of her own.

Q: Suppose a 31-year old retarded woman with mental capacity of a 5-year old had sexual intercourse with a man, what is the crime committed?

A: Statutory rape. Her mental and not only her chronological age are considered (*People v. Manalpaz*, G.R. No. L-41819, February 28, 1978).

Generally, to state the exact, or at least the approximate date the purported rape was committed is not necessary.

GR: Time is not an essential element of the crime of rape. What is important is that the information alleges that the victim was a minor under twelve years of age and that the accused had carnal knowledge of her, even if the accused did not use force or intimidation on her or deprived her of reason.

XPN: The date of the commission of the rape becomes relevant only when the accuracy and truthfulness of the complainant's narration practically hinge on the date of the commission of the crime (*People v. Dion*, G.R. No. 181035, July 4, 2011).

NOTE: The date of the commission of rape is not an essential element thereof, for the gravamen of the offense is carnal knowledge of a woman. The discrepancies in the actual dates the rapes took place are not serious errors warranting a reversal of the appellant's conviction. What is decisive in a rape charge is the victim's positive identification of the accused as the malefactor (*People v. Mercado*, G.R. No. 189847, May 30, 2011).

Q: Romeo was convicted of rape through sexual assault. He claims that he should be acquitted as the prosecution was not able to prove the accusations against him beyond

reasonable doubt. He likewise puts in issue the fact that there was no in-court identification.

A: Jurisprudence consistently holds that testimonies of minor victims are generally given full weight and credence as the court considers their youth and immaturity as badges of truth and sincerity. Also, the fact that there was no in-court identification was of no moment. In-court identification of the offender is essential only when there is a question or doubt on whether the one alleged to have committed the crime is the same person who is charged in the information and subject of the trial. (*PEOPLE OF THE PHILIPPINES v. ROMEO GARIN GR. No. 222654, Feb. 21, 2018*).

Sweetheart theory in rape

As held in *People v. Cabanilla*, the sweetheart defense is an affirmative defense that must be supported by convincing proof. Having an illicit affair does not rule out rape as it does not necessarily mean that consent was present. A love affair does not justify rape for a man does not have an unbridled license to subject his beloved to his carnal desires against her will (*People v. Cias, G.R. No. 194379, June 1, 2011*).

Rape shield rule

The character of the woman is immaterial in rape. It is no defense that the woman is of unchaste character, provided the illicit relations were committed with force and violence.

"Women's honor" Doctrine

Women's honor doctrine or the so-called "Maria Clara Doctrine" posits that, it is a well-known fact that women, especially Filipinos, would not admit that they have been abused unless that abuse had actually happened. This is due to their natural instinct to protect their honor. (*People vs. Tano, 109 Phil. 912 (1960)*)

NOTE: The Supreme Court in *People vs. Amarela and Rancho* (January 17, 2018), through Justice Martires enunciated that courts must not rely solely on the Maria Clara stereotype of a demure and reserved Filipino woman. Rather, Courts should stay away from such mindset and accept the realities of a woman's dynamic role in society today; she who has over the years transformed into a strong and confidently intelligent and beautiful person willing to fight for her rights.

Necessity to prove every count of rape in cases of multiple rape

It is settled that each and every charge of rape is a separate and distinct crime that the law requires to be proven beyond reasonable doubt. The prosecution's evidence must pass the exacting test of moral certainty that the law demands to satisfy the burden of overcoming the appellant's presumption of innocence (*People v. Arpon, G.R. No. 183563, December 14, 2011*).

Reputation in the prosecution of rape, immaterial

It is immaterial in rape, there being absolutely no nexus between it and the odious deed committed. A woman of loose morals could still be a victim of rape, the essence thereof being carnal knowledge of a woman without her consent.

Evidence which may be accepted in the prosecution of rape

1. Any physical overt act manifesting resistance against the act of rape in any degree from the offended party; or
2. Where the offended party is so situated as to render him/her incapable of giving consent (*Art. 266-D*).

Absence of signs of external physical injuries does not signify lack of resistance on the part of the rape victim

Resistance from the victim need not be carried to the point of inviting death or sustaining physical injuries at the hands of the rapist.

NOTE: In rape, the force and intimidation must be viewed in light of the victim's perception and judgment at the time of the commission of the crime. As already settled in jurisprudence, not all victims react the same way. Moreover, resistance is not an element of rape. A rape victim has no burden to prove that she did all within her power to resist the force or intimidation employed upon her. As long as the force or intimidation is present, whether it was more or less irresistible is beside the point (*People v. Baldo, G.R. No. 175238, February 24, 2009*).

Physical resistance need not be established in rape when intimidation is exercised upon the victim who submits against her will to the rapist's lust because of fear for her life or personal safety (*People v. Tuazon, G.R. No. 168650, October 26, 2007*).

A medico-legal finding in the prosecution of rape cases, not indispensable

The medico-legal findings are “merely corroborative in character and is not an element of rape”. The prime consideration in the prosecution of rape is the victim's testimony, not necessarily the medical findings; a medical examination of the victim is not indispensable in a prosecution for rape. The victim's testimony alone, if credible, is sufficient to convict an accused (*People v. Perez, G.R. No. 191265, September 14, 2011*).

Q: 11-year old "AAA" went to the Pasig public market to buy a pair of slippers. However, "AAA" was not able to buy her pair of slippers because appellant suddenly grabbed her left arm and pulled her towards the nearby Mega Parking Plaza. Upon reaching the fourth floor of Mega Parking Plaza, appellant pulled "AAA's" shorts and panty down to her knees. Appellant then sat on the stairs, placed "AAA" on his lap, inserted his penis into her vagina and performed push and pull movements. "AAA" was overcome with fear and she felt pain in her vagina. Immediately upon seeing the sexual molestations, Boca, the security guard, grabbed appellant's arm, handcuffed him and brought him to the barangay hall. Is the appellant guilty of the crime of rape?

A: Yes. Appellant is guilty of the crime of rape. Testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has in fact been committed. When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity. The absence of fresh lacerations in Remilyn's hymen does not prove that appellant did not rape her. A freshly broken hymen is not an essential element of rape and healed lacerations do not negate rape. In addition, a medical examination and a medical certificate are merely corroborative and are not indispensable to the prosecution of a rape case. The credible disclosure of a minor that the accused raped her is the most important proof of sexual abuse. (*People v. De Jesus, G.R. No. 190622, October 7, 2013*)

Crime committed if the victim was a minor

The accused can be charged with either Rape or Child Abuse and be convicted therefor. The case of *People v. Abay*, is enlightening and instructional on this issue. It was stated in that case that if the victim is 12 years or older, the offender should be charged with either sexual abuse under Section 5(b) of RA 7610 or rape under Art. 266-A (except par. 1[d]) of the RPC. However, the offender cannot be accused of both crimes for the same act because his right against double jeopardy will be prejudiced. A person cannot be subjected twice to criminal liability for a single criminal act. Likewise, rape cannot be complexed with a violation of Section 5(b) of RA 7610. Under Sec. 48 of the Revised Penal Code (on complex crimes), a felony under the RPC (such as rape) cannot be complexed with an offense penalized by a special law (*People v. Dahilig G.R. No. 187083, June 13, 2011*).

Q: XXX (then a 10-year old boy) requested his mother to pick up Ricalde at McDonald's Bel-Air, Sta. Rosa. Ricalde, then 31 years old, is a distant relative and textmate of XXX. After dinner, XXX's mother told Ricalde to spend the night at their house as it was late. He slept on the sofa while XXX slept on the living room floor. It was around 2:00 a.m. when XXX awoke as "he felt pain in his anus and stomach and something inserted in his anus." He saw that Ricalde "fondled his penis." When Ricalde returned to the sofa, XXX ran toward his mother's room to tell her what happened. He also told his mother that Ricalde played with his sexual organ. XXX's mother armed herself with a knife for self-defense when she confronted Ricalde about the incident, but he remained silent. She asked him to leave. Is Ricalde guilty of the crime of rape?

A: Yes, all the elements of rape is present in the case at bar. Rape under the second paragraph of Article 266-A is also known as "instrument or object rape," "gender-free rape," or "homosexual rape." Any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person. The gravamen of rape through sexual assault is "the insertion of the penis into another person's mouth or anal orifice, or any instrument or object, into another person's genital or anal orifice" (*Ricalde v. People, G.R. No. 211002, January 21, 2015*).



Attempted rape vis-à-vis acts of lasciviousness

ATTEMPTED RAPE	ACTS OF LASCIVIOUSNESS
There is intent to effect sexual cohesion, although unsuccessful.	There is no intention to lie with the offended woman. The intention is merely to satisfy lewd design.

Q: Braulio invited Lulu, his 11-year old stepdaughter, inside the master bedroom. He pulled out a knife and threatened her with harm unless she submitted to his desires. He was touching her chest and sex organ when his wife caught him in the act.

The prosecutor is unsure whether to charge Braulio for acts of lasciviousness under Art. 336 of the RPC, for lascivious conduct under RA 7610 (Special Protection against Child Abuse, Exploitation, and Discrimination Act); or for rape under Art.266-A of the RPC. What is the crime committed? Explain. (2016 Bar)

A: The acts of Braulio of touching the chest and sex organ of Lulu who is under 12 years of age, are merely acts of lasciviousness and not attempted rape because intent to have sexual intercourse is not clearly shown. (*People v. Banzuela*, G.R. No. 202060, December 11, 2013) To be held liable of attempted rape, it must be shown that the erectile penis is in the position to penetrate (*Cruz v. People*, G.R. No. 166441, October 8, 2014) or the offender actually commenced to force his penis into the victim's sexual organ. (*People v. Banzuela*, supra)

Principles in reviewing rape cases

In reviewing rape cases, the Court is guided by three settled principles:

1. An accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove;
2. Considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; and
3. The evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense(*People v. Ogarte y Ocob*, G.R. No. 182690, May 30, 2011).

Q: One night while AAA was sleeping, XXX hugged her and kissed her nape and neck. He then undressed AAA and went on top of her and held her hands. Afterwards, he parted AAA's legs and then tried to insert his penis into her vagina. XXX's penis touched AAA's vagina but he stopped as soon as AAA's cry got louder. He then threatened AAA not to disclose the incident. What crime is committed?

A: XXX is guilty of attempted rape. Without showing of such carnal knowledge, XXX is guilty only of attempted rape. Mere touching cannot be considered as slight penetration. Since XXX did not succeed in inserting his penis in AAA's female organ he cannot be convicted of consummated rape.

Slightest penile penetration is necessary (*People v. Pareja*, G.R. No. 188979, September 5, 2012).

Q: Cruz and his wife employed AAA and BBB to help them in their plastic and glassware business during a town fiesta in La Union. After fixing the wares in order for display they went to bed inside the tents. Less than an hour passed, AAA was awakened with Cruz on top of her mashing her breast and touching her vagina. AAA fought back and was able to free herself from Cruz. She went out to seek for help. Is Cruz guilty for the crime of attempted rape?

A: No, Cruz is not guilty of attempted rape. The intent to commit rape must be inferred from overt acts directly leading to rape. In embracing AAA and touching her vagina and breasts did not directly manifest his intent to lie with her. The lack of evidence showing his erectile penis being in the position to penetrate her when he was on top of her deterred any inference about his intent to lie with her. At most, his acts reflected lewdness and lust for her (*Cruz v. People*, G.R. No. 166441, October 8, 2014).

Q: POJO raped AAA, but it took AAA 27 days from the crime to report the incident of the rape. Should AAA file a complaint later on, will it affect her credibility as a complaining witness?

A: No, a delay in reporting the incident of rape does not diminish the credibility of the complaining witness. (*People v. Pojo*, G.R. No. 183709, December 6, 2010)



CRIMES AGAINST PERSONAL LIBERTY AND SECURITY

**KIDNAPPING AND SERIOUS ILLEGAL DETENTION
ART. 267**

Elements (BAR 2006)

1. Offender is a private individual who is not any of the parents of the victim;
NOTE: If the offender is a public officer who has the authority to arrest or detain a person, the crime committed is Arbitrary Detention.
2. He kidnaps or detains another, or in any other manner deprives the latter of his liberty;
3. Act of detention or kidnapping must be illegal; and
4. In the commission of the offense, *any* of the following circumstances is present: **(BAR 2009)**
 - a. Kidnapping or detention lasts for more than 3 days; **(BAR 2014)**
 - b. It is committed simulating public authority;
 - c. Any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or
 - d. The person kidnapped or detained is a minor, female, or a public officer. **(BAR 1991, 2005)**

NOTE: In case of a minor, the kidnapper must not be one of the parents.

For the crime of kidnapping to exist, there must be indubitable proof that the actual intent of the malefactors was to deprive the offended party of her liberty, and not where such restraint of her freedom of action was merely incident in the commission of another offense primarily intended by the offenders (*People v. Puno*, G.R. No. 97471, February 17, 1993).

Essence of the crime of kidnapping

The essence of the crime of kidnapping is the actual deprivation of the victim's liberty, coupled with the intent of the accused to effect it (*People v. Jacalne y Gutierrez*, G.R. No. 168552, October 3, 2011).

NOTE: The original Spanish version of Art. 267 used the term lock up (encarcarar) rather than kidnap (sequestrator or raptor) which includes not only imprisonment of a person but also the

deprivation of his liberty in whatever form and length of time. (GR. No. 171653, April 14, 2007)

When detention is considered illegal

The detention punished in this article is considered illegal when such detention is not ordered by a competent authority or not permitted by law.

Crimes that may be possibly committed when a female is transported from one place to another

1. *Forcible abduction* – If a woman is transported from one place to another by virtue of restraining her of her liberty and that act is coupled with lewd designs.
2. *Kidnapping with serious illegal detention* – If a woman is transported just to restrain her liberty. There is no lewd design or intent.
3. *Grave coercion* – If a woman is carried away just to break her will, to compel her to agree to demand or request by the offender.

Deprivation as contemplated in Article 267

Deprivation required by Article 267 of the RPC means not only the imprisonment of a person, but also the deprivation of his liberty in whatever form and for whatever length of time. It involves a situation where the victim cannot go out of the place of confinement or detention or is restricted or impeded in his liberty to move. If the victim is a child, it also includes the intention of the accused to deprive the parents of the custody of the child (*People v. Baluya y Notarte*, G.R. No. 181822, April 13, 2011).

Q: Jomarie, a minor, was dragged to the house of Gutierrez after she refused to go with him. Upon reaching the house, he tied her hands. When Jomarie pleaded that she be allowed to go home, he refused. Although Jomarie only stayed outside the house, it was inside the gate of a fenced property which is high enough such that people outside could not see what happens inside. Was there kidnapping?

A: YES. When Gutierrez tied the hands of Jomarie, the former's intention to deprive Jomarie of her liberty has been clearly shown. For there to be kidnapping, it is enough that the victim is restrained from going home. Because of her tender age, and because she did not know her way back home, she was then and there deprived of



her liberty. It has been repeatedly held that if the victim is a minor, the duration of his detention is immaterial (*People v. Jacalne*, G.R. No. 168552, October 3, 2011).

Q: Anniban and Lerio are neighbors. Lerio entered the house of Anniban, laid down beside the infant child of Anniban and began chatting with her. Lerio then told Anniban that she would take the infant outside to bask him under the morning sun but the latter refused. A few minutes later, Anniban realized that Lerio and her child were no longer in the house.

After searching, Anniban found her infant child, Lerio's boyfriend, and Lerio on board a vessel. Lerio, together with co-accused were charged with Kidnapping of a Minor. Are they liable as charged?

A: Yes. All the elements of kidnapping under Art. 267, par. 4 are present. The prosecution has adequately and satisfactorily proven that accused-appellant is a private individual; that accused-appellant took one-month old baby Justin Clyde from his residence, without the knowledge or consent of, and against the will of his mother; and that the victim was a minor, one-month old at the time of the incident, the fact of which accused-appellant herself admitted (*People v. Lerio*, G.R. No. 209039, December 09, 2015).

Q: Suppose the kidnapped victim disappeared, will such disappearance negate criminal liability of the kidnappers?

A: NO, because in kidnaping, the essential element is deprivation of the victim's liberty and the subsequent disappearance of the victim will not exonerate the accused from prosecution.

Otherwise, kidnappers can easily avoid punishment by the simple expedient of disposing of their victim's bodies.

Effect of the voluntary release of the victim on the criminal liability of the kidnappers (BAR 2004)

1. If it is *serious illegal detention*, the voluntary release has **no effect** on the criminal liability of the offenders.
2. If it is *slight illegal detention*, the voluntary release **will mitigate** the criminal liability of the offenders.
3. In *kidnapping for ransom*, voluntary release will **not mitigate** the crime.

Ransom

Ransom is the money, price or consideration paid or demanded for the redemption of a captured person or persons, the payment of which releases them from captivity.

No specific form of ransom is required to consummate the felony of kidnapping for ransom, as long as the ransom was intended as a bargaining chip in exchange for the victim's freedom. (*People vs. Jatulan*, GR. No. 171653, April 14, 2007)

Demand for ransom is not necessary to consummate the crime

Asking for ransom money is not an element of the offense. If the purpose of kidnapping is to extort ransom even if there is no actual demand, then it will aggravate the penalty.

Qualifying circumstances of the crime of kidnapping and serious illegal detention

1. If the purpose of the kidnapping is to extort ransom;

NOTE: If the victim is kidnapped and illegally detained for the purpose of extorting ransom, the duration of his detention is immaterial (*People v. Ramos*, G.R. No. 178039 January 19, 2011).

2. When the victim is killed or dies as a consequence of the detention;
3. When the victim is raped; or
4. When the victim is subjected to torture or dehumanizing acts.

NOTE: If the victim is a woman or a public officer, the detention is always serious no matter how short the period of detention is.

Special complex crimes that may arise in kidnapping

1. Kidnapping with murder or homicide

NOTE: *Homicide* is used in the generic sense and includes murder because the killing is not treated as a separate crime but a qualifying circumstance.

2. Kidnapping with rape
3. Kidnapping with physical injuries

Q: Rafael was forcibly dragged and poked with a gun by the accused. Upon Rosalina's plea for

pity due to Rafael's existing heart ailment, Rosalina was allowed to apply CPR. Later that afternoon, while being detained inside a room, unknown to Rosalina, Rafael had just died and his body was placed inside the trunk of a car. What crime was committed?

A: The special complex crime of Kidnapping with Homicide due to Republic Act No. 7659, which amended Article 267 of the Revised Penal Code. As expounded in *People v. Ramos*, Where the person Kidnapped is killed in the course of the detention, regardless of whether the killing was purposely sought or was merely an afterthought, the kidnapping and murder or homicide can no longer be complexed under Art. 48, nor be treated as separate crimes, but shall be punished as a special complex crime under the last paragraph of Art. 267, as amended by RA No. 7659 (*People v. Montanir, et. al*, G.R. No. 187534, April 4, 2011).

Q: Suppose aside from demanding money, two persons were killed on occasion of kidnapping, what is the crime committed?

A: Kidnapping for ransom with homicide (not double homicide) is committed. Regardless of the number of killings or death that occurred as a consequence of the kidnapping, the appropriate denomination of the crime should be the special complex crime of kidnapping for ransom with homicide. (*People vs. Reyes*, 581 SCRA 691, March 17, 2009)

When the taking of the victim is only incidental to the basic purpose to kill

The crime is murder and not the special complex crime of kidnapping with homicide because the primordial intent is to kill the victim and the deprivation of liberty is merely incidental thereto.

When other persons, not the victims themselves, are killed on the occasion of kidnapping

Two separate crimes of murder or homicide and kidnapping are committed. The killing would be treated as a separate crime.

Q: The accused detained the victim AAA for 39 days and raped her four (4) times, is the RTC correct in its ruling that kidnapping with rape, four counts of rape and rape through sexual assault were committed?

A: NO. The crime committed was a special complex crime of kidnapping with rape.

Emphatically, the last paragraph of Article 267 of the Revised Penal Code, as amended, states that when the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed. This provision gives rise to a special complex crime. Notably, however, no matter how many rapes had been committed in the special complex crime of kidnapping with rape, the resultant crime is only one kidnapping with rape. In a way, RA 7659 depreciated the seriousness of rape because no matter how many times the victim was raped, like in the present case, there is only one crime committed – the special complex crime of kidnapping with rape (*People v. Mirandilla, Jr.*, G.R. No. 186417, July 27, 2011).

Q: If the crime of kidnapping was committed through conspiracy and rape was committed on the occasion thereof, but one of the conspirators were no longer associated with the one who raped the victim, can he be held liable for kidnapping with rape?

A: NO. There was no opportunity to prevent his co- conspirators from raping the victim because at the time of rape, he was no longer associated with his co-conspirators. He cannot be held liable for the subsequent rape of the victim (*People v. Anticamara et al*, G.R. No. 178771, June 8, 2011).

Kidnapping with Rape vis-à-vis Forcible Abduction with Rape

BASIS	KIDNAPPING WITH RAPE	FORCIBLE ABDUCTION WITH RAPE (BAR 2014)
<i>As to plurality of crimes</i>	The crime is composite or a special complex crime if the woman kidnapped is also raped.	The crime is complex under Art. 48 since forcible abduction is a necessary means to commit the rape.
<i>As to lewd designs</i>	There is no lewd design.	There is lewd design.
<i>As to treatment of rape</i>	Rape is not a separate crime but merely a qualifying	Rape may be treated as a separate crime.



	circumstance.	
As to consideration of multiple rapes	Even if there are multiple rapes, there is only one crime of kidnapping with rape.	If there are multiple rapes, only one rape shall be complexed with forcible abduction because the abduction is a necessary means to commit only the first rape, thus the other rape incidents will be treated as separate crimes.
As to treatment of attempted rape	If rape was merely attempted, 2 separate crimes are committed- kidnapping and attempted rape.	If rape is merely attempted, there is only forcible abduction, the attempt to rape is deemed merely a manifestation of lewd designs.

Kidnapping vis-à-vis Forcible Abduction

KIDNAPPING	FORCIBLE ABDUCTION
At the outset, the intention of the offender is merely to detain the victim.	At the outset, the taking of the victim is coupled with lewd designs.

Kidnapping for Ransom vis-à-vis Robbery, insofar as the delivery of money to the offenders is concerned

KIDNAPPING FOR RANSOM	ROBBERY
Ransom is paid in exchange for the offended party's liberty.	The motive of the offenders is not to restrain or deprive the victim of his liberty but to divest him of his valuables.

Illegal Detention vis-à-vis Arbitrary Detention

ILLEGAL DETENTION	ARBITRARY DETENTION
Committed by a private person who kidnaps, detains or otherwise deprives another of his liberty.	Committed by a public officer who detains a person without legal grounds.
Crime is against personal liberty and security.	Crime against the fundamental law of the State.

**SLIGHT ILLEGAL DETENTION
ART. 268**

Elements

1. Offender is a private individual;
2. He kidnaps or detains another, or in any other manner deprives him of his liberty;
3. Act of kidnapping or detention is illegal; and
4. Crime is committed without the attendance of any of the circumstances enumerated in Art. 267.

NOTE: If there is a demand for ransom the penalty is *Reclusion Perpetua* to death just like when what was committed was serious illegal detention and a demand for ransom was made.

Effect of the voluntary release of the victim on the criminal liability of the kidnappers

If the offender: (a) voluntarily releases the person so kidnapped or detained within 3 days from the commencement of the detention (b) without having attained the purpose intended and (c) before the institution of criminal proceedings against him, his liability is mitigated. **(BAR 1997, 2004)**

No mitigation of the penalty is allowed when the proceedings have already been instituted for in this case, the accused already acted because of fear rather than repentance.

**UNLAWFUL ARREST
ART. 269**

Elements

1. Offender arrests or detains another person;

2. Purpose of the offender is to deliver him to the proper authorities; and
3. Arrest or detention is not authorized by law or there is no reasonable ground therefor.

NOTE:In *unlawful arrest*, the illegal detention is only incidental. However, if it is arbitrary detention, it is the unlawful arrest which is incidental.

Essence of the crime of unlawful arrest

The arrest must be made for the purpose of delivering the person arrested to the proper authorities but it was made without any reasonable grounds therefor.

NOTE:If the purpose is not to deliver the person to the proper authorities, the crime could be Illegal Detention under Art. 267 or 268 of the Revised Penal Code since the person arrested would necessarily be deprived of his liberty.

Persons liable under this article

Offender is any person, whether a public officer or a private individual. However, the public officer must not be vested with the authority to arrest or detain a person or must not act in his official capacity. Otherwise, Art. 124 (Arbitrary detention) is applicable and not Art. 269.

If the offender is a public officer or a law enforcer and he arrested or detained, without legal or reasonable ground, any person within his jurisdiction for the purpose of delivering him to the proper authorities, such officer is guilty of Arbitrary Detention under Art. 124 of the RPC. If the person arrested or detained is not within his jurisdiction, the officer's act would constitute Unlawful Arrest under this article.

Period of detention fixed by law

There is no period of detention fixed by law. What is controlling is the motive of the offender. If his purpose is to deliver him to the proper authorities, it is still unlawful arrest. But the absence of this motive may be shown by the length of time the victim is detained.

Crimes that may be committed if a person is arrested and/or detained

1. If the arrest is made without a warrant and under circumstances not allowing a warrantless arrest, the crime would be unlawful arrest.

2. If the person arrested is not delivered to the authorities, the private individual making the arrest incurs criminal liability for illegal
3. detention under Art. 267 or 268.
4. If the offender is a public officer, the crime is arbitrary detention under Article 124.
5. If the detention or arrest is for a legal ground, but the public officer delays delivery of the person arrested to the proper judicial authorities, the crime is delay in the delivery of detained persons under Article 125.

Delay in the Delivery of Detained Persons vis-à-vis Unlawful Arrest

DELAY IN THE DELIVERY OF DETAINED PERSONS	UNLAWFUL ARREST
Detention is for some legal ground.	Detention is not authorized by law.
Crime is committed by failing to deliver such person to the proper judicial authority within a certain period.	Committed by making an arrest not authorized by law.
The offender is a public officer who has the authority to arrest or detain a person.	The offender is a private individual, or a public officer who has no authority to arrest or detain a person.

KIDNAPPING AND FAILURE TO RETURN A MINOR ART. 270

Elements (BAR 2002)

1. Offender is entrusted with the custody of a minor person; and
2. He deliberately fails to restore the said minor to his parents or guardians.

While one of the essential elements of this crime is that the offender was entrusted with the custody of the minor, what is actually being punished is *not* the kidnapping but the deliberate failure of that person to restore the minor to his parents or guardians. As the penalty for such an offense is so severe, the Court further explained that "deliberate" as used in Article 270 means something more than mere negligence- it must be premeditated, headstrong, foolishly daring or intentionally and maliciously wrong (*People v. Marquez, G.R. No. 181440, April 13, 2011*).



Crime can be committed by the parents of the minor

This happens where they live separately and the custody of the minor is given to one of them, the other parent kidnaps such minor from the one having the lawful custody of the child.

Absence of any of the elements of Art. 270

If any of the elements of Art 270 is absent, the kidnapping of the minor will then fall under Art. 267 (kidnapping and serious illegal detention), but if the accused is any of the parents, Art. 267 will not apply. Arts. 270 and 271 will apply.

Kidnapping and serious illegal detention v. kidnapping and failure to return a minor

BASIS	KIDNAPPING AND SERIOUS ILLEGAL DETENTION	KIDNAPPING AND FAILURE TO RETURN A MINOR
<i>As to relation of offender to the victim</i>	Offender is <i>not</i> entrusted with the custody of the victim.	Offender is entrusted with the custody of the minor.
<i>As to acts punished</i>	Illegally detaining or kidnapping the minor.	What is punished is the deliberate failure of the offender having the custody of the minor to restore him to his parents or guardian.

**INDUCING A MINOR TO ABANDON HIS HOME
ART. 271**

Elements

1. A minor is living in the home of his parents or guardian or the person entrusted with his custody; and
2. Offender induces said minor to abandon such home.

Inducement must be actual, committed with criminal intent, and determined by a will to cause damage. The minor should not leave his home of his own free will.

The minor actually need not abandon the home to commit the crime

It is not necessary that the minor actually abandon the home to commit the crime. What constitutes the crime is the act of inducing a minor to abandon his home or the home of his guardians and it is not necessary that the minor actually abandons the home.

Rationale for penalizing the crime of inducing a minor to abandon his home

It is intended to discourage and prevent disruption of filial relationship and undue interference with the parents' right and duty to the custody of their minor children and to rear them.

Kidnapping and serious illegal detention (Art 167) vis-à-vis Inducing a minor to abandon his home (Art 271)

ART. 267	ART. 271
Cannot be committed by the parents of the minor.	Parents can commit this crime against their own children.

**SLAVERY
ART. 272**

Elements

1. That the offender purchases, sells, kidnaps or detains a human being; and
2. That the purpose of the offender is to enslave such human being.

If a person was obliged to render service in another's house as a servant without remuneration whatever and to remain there so long as he has not paid his debt, the crime of slavery is committed (*Reyes v. Alojado, G.R. No. 5671, August 24, 1910*).

Qualifying circumstance in the crime of Slavery

When the purpose of the offender is to assign the offended party to some immoral traffic. *E.g., Prostitution.*

Slavery vis-à-vis white slave trade

SLAVERY	WHITE SLAVE TRADE
The offender is not engaged in prostitution.	The offender is engaged in prostitution.

Slavery vis-à-vis Illegal detention

SLAVERY	ILLEGAL DETENTION
The purpose for the detention is to enslave the offended party.	The purpose is to deprive or restrain the offended party of his liberty.

In both, the offended party is detained.

**EXPLOITATION OF CHILD LABOR
ART. 273**

Elements (BAR 2006, 2009)

1. Offender retains a minor in his service;
2. It is against the will of the minor; and
3. It is under the pretext of reimbursing himself of a debt incurred by an ascendant, guardian or person entrusted with the custody of such minor.

NOTE: Indebtedness is not a ground for detention. However if the minor consents to render service and be retained under the pretext of reimbursing a debt incurred, there is no crime. The debt must be that incurred by the ascendants, guardian or custodian of the minor.

**SERVICES RENDERED UNDER COMPULSION IN
PAYMENT OF DEBT
ART. 274**

Elements (BAR 2006)

1. Offender compels a debtor to work for him, either as household servant or farm laborer;
2. It is against the debtor's will; and
3. The purpose is to require or enforce the payment of a debt.

NOTE: If there is no creditor-debtor relationship between the offender and the offended party, coercion is committed.

Art. 273 vis-à-vis Art. 274

ART. 273	ART. 274
Victim is a minor.	Does not distinguish whether victim is a minor or not.
Minor is compelled to render services for the supposed debt of his parent or guardian.	Debtor himself is the one compelled to work for the offender
Service of minor is not limited to household and farm work.	Limited to household and farm work.

**ABANDONMENT OF PERSONS IN DANGER AND
ABANDONMENT OF ONE'S OWN VICTIM
ART. 275**

Punishable acts

1. Failing to render assistance to any person whom the offender finds in an uninhabited place wounded or in danger of dying when he can render such assistance without detriment to himself, unless such omission shall constitute a more serious offense.

Elements:

- a. The place is not inhabited;
- b. Accused found there a person wounded or in danger of dying;
- c. Accused can render assistance without detriment to himself; and
- d. Accused fails to render assistance.

2. Failing to help or render assistance to another whom the offender has accidentally wounded or injured.

NOTE: The character of the place is immaterial.

3. Failing to deliver a child under 7 years of age whom the offender has found abandoned, to the authorities or to his family, or failing to take him to a safe place.

NOTE: It is immaterial that the offender did not know that the child is under 7 years.

Uninhabited place

It is determined by possibility of person receiving assistance from another. Even if there are many houses around the place, it may still be uninhabited if the possibility of receiving assistance is remote.



**ABANDONING A MINOR
ART. 276**

Elements

1. Offender has the custody of the child;
2. Child is under 7 years of age;
3. He abandons such child; and
4. He has no intent to kill the child when the latter is abandoned.

Kind of abandonment contemplated by law

Not the momentary leaving of a child but the abandonment of such minor that deprives him of the care and protection from danger to his person.

NOTE:A permanent, conscious and deliberate abandonment is required in this article. There must be an interruption of the care and protection that a child needs by reason of his tender age.

Qualifying circumstances under Art. 276

1. When death of the minor resulted from such abandonment.

NOTE:Intent to kill cannot be presumed from the death the child. The ruling that intent to kill is conclusively presumed from the death of the victim is applicable only to crimes against persons and not to crimes against security, particularly the crime of abandoning a minor under Art. 276.

2. If the life of the minor was in danger because of the abandonment.

If the offender is the parent of the minor who is abandoned, he shall be deprived of parental authority.

**ABANDONMENT OF MINOR BY A PERSON
ENTRUSTED WITH HIS CUSTODY;
INDIFFERENCE OF PARENTS
ART. 277**

Acts punished under Art. 277

1. Delivering a minor to a public institution or other persons without the consent of the one who entrusted such minor to the care of the offender or, in the absence of that one, without the consent of the proper authorities; and
2. Neglecting one's children by not giving them the education which their station in life requires and financial condition permits.

Elements of the crime of abandonment of minor by one charged with the rearing or education of said minor

1. Offender has charge of the rearing or education of a minor;
2. He delivers said minor to a public institution or other persons; and
3. One who entrusted such child to the offender has not consented to such act; or if the one who entrusted such child to the offender is absent, the proper authorities have not consented to it.

NOTE:Only the person charged with the rearing or education of the minor is liable.

Elements of the crime of indifference of parents

1. Offender is a parent;
2. He neglects his children by not giving them education; and
3. His station in life requires such education and his financial condition permits it.

NOTE:For the parents to be penalized for the crime of Indifference of Parents, it must be shown that they are in a position to give their children the education in life, and that they consciously and deliberately neglect their children.

Abandonment of Minor by Person Entrusted with his Custody; Indifference of Parents (Art. 277) vis-à-vis Abandoning a Minor (Art. 276)

BASIS	ART. 227	ART. 276
<i>As to custody</i>	The custody of the offender is specific, that is, the custody for the rearing or education of the minor.	The custody of the minor is stated in general.
<i>As to age</i>	Minor is under 18 years of age.	Minor is under 7 years of age.
<i>As to abandonment</i>	Minor is delivered to a public institution or other person.	Minor is abandoned in such a way as to deprive him of the care and protection that his tender years need.

**EXPLOITATION OF MINORS
ART. 278**

Punishable acts

1. Causing any boy or girl under 16 to perform any dangerous feat of balancing, physical strength or contortion, the offender being any person;
2. Employing children under 16 years of age who are not the children or descendants of the offender in exhibitions of acrobat, gymnast, rope walker, diver, or wild animal tamer, the offender being an acrobat, etc., or circus manager or person engaged in any of said callings;
3. Employing any descendant under 12 years of age in dangerous exhibitions enumerated in the next preceding paragraph, the offender being engaged in any of the said callings;
4. Delivering a child under 16 years of age gratuitously to any person if any of the callings enumerated in paragraph 2, or to any habitual vagrant or beggar, the offender being an ascendant, guardian, teacher or person entrusted in any capacity with the care of such child; and
5. Inducing any child under 16 years of age to abandon the home of its ascendants, guardians, curators or teachers to follow any person entrusted in any of the callings mentioned in par. 2 or to accompany any habitual vagrant or beggar, the offender being any person.

NOTE: The exploitation of the minor must be of such nature as to endanger his life or safety in order to constitute the offense described in this article.

Kind of business contemplated under Art. 278

Art. 278 contemplates a business that generally attracts children so that they themselves may enjoy working there unaware of the danger to their own lives and limb, such as circuses.

When the employer is the parent or ascendant of the child who is already 12 years of age

The crime of exploitation of minors is not committed if the employer is a parent or ascendant unless the minor is less than 12 years old.

If the employer is an ascendant, the law regards that he would look after the welfare and

protection of the child. Hence, the age is lowered to 12 years. Below that age, the crime is committed.

Qualifying circumstance under Art. 277

If the delivery of the child to any person following any of the callings of acrobat, gymnast, rope-walker, diver, wild-animal tamer or circus manager or to any habitual vagrant or beggar is made in consideration of any price, compensation or promise, the penalty is higher.

Exploitation of Minors (Art. 278, Par. 5) vis-à-vis Inducing a Minor to Abandon his Home (Art.271)

ART. 278,PAR. 5	ART. 271
The purpose of inducing the minor to abandon the home is to follow any person engaged in any of the callings mentioned.	No such person.
Victim is under 16 years of age.	Victim is under 18 years of age.

Correlation of exploitation of minors to RA 7610 (Special Protection of Children against Child Abuse, Exploitation and Discrimination Act)

BASIS	EXPLOITATION OF MINORS	RA 7610
<i>As to its application</i>	Applies to minors below 16 years of age.	Applies to minors below 18 years old.
<i>As to danger to the child</i>	The business is of such kind that would place the life or limb of the minor in danger, even though working for him is not against the will of the minor.	As long as the employment is inimical – even though there is no physical risk – and detrimental to the child’s interest – against moral, intellectual, physical, and mental development of the minor.



As to liability of employer	If the child fell and suffered physical injuries while working, the employer shall be liable for said physical injuries in addition to his liability for exploitation of minors.	No such similar provision exists under RA 7610.

Criminal liability for neglect of child under Art. 59 (4) of PD 603 attaches if any of the parents is guilty of neglecting the child's education

The crime may be committed by any of the parents. Liability for the crime does not depend on whether the parent is also guilty of neglecting his/her child. The law intends to punish the neglect of any parent, which neglect corresponds to the failure to give the child the education which the family's station in life and financial condition permit. The irresponsible parent cannot exculpate himself/herself from the consequences of his/her neglect by invoking the other parent's faithful compliance with his or her own parental duties (*De Guzman v. Perez, G.R. No. 156013, July 25, 2006*).

NOTE: The neglect of child punished under Art. 59(4) of PD 603 is also a crime (known as indifference of parents) penalized under the second paragraph of Art.277 of the RPC (*De Guzman v. Perez, G.R. No. 156013, July 25, 2006*). Hence, it is excluded from the coverage of RA 7610.

**ADDITIONAL PENALTIES FOR OTHER OFFENSES
ART.279**

The offender is not only liable for the abandonment or exploitation but also for all its consequences. If as a result, physical injuries or death resulted, another crime is committed by authority of Art. 279.

**QUALIFIED TRESPASS TO DWELLING
ART. 280**

Elements (BAR 2002, 2009)

1. Offender is a private person;
2. He enters the dwelling of another; and

3. Such entrance is against the latter's will.

If the offender is a public officer

If the offender is a public officer or employee, the entrance into the dwelling against the will of the occupant is violation of domicile punishable under Art. 128.

Dwelling

Dwelling is a place that a person inhabits or any building or structure exclusively devoted for rest and comfort. Whether a building is a dwelling house or not depends upon the use. It includes the dependencies which have interior communication with the house. It is not necessary that it be a permanent dwelling of a person.

NOTE: In general, all members of the household must be presumed to have authority to extend an invitation to enter the house.

"Against the will"

Against the will means that the entrance is either expressly or impliedly prohibited.

NOTE: There must be an opposition on the part of the owner of the house to the entry of the accused. Lack of permission does not amount to prohibition.

Instances where prohibition to enter a dwelling is implied or presumed

1. Entering a dwelling of another at late hour of the night.
2. When the entrance is made through means not intended for ingress.
3. The existence of enmity or strained relations between the accused and the occupant.
4. The door is closed even if it is not locked.

Qualifying circumstance of the offense

If the offense is committed by means of violence or intimidation, the penalty is higher.

If violence or intimidation is employed, there is no need for prohibition. In fact, even if violence or intimidation took place immediately after the offender has entered the dwelling, there is Qualified Trespass to Dwelling (*U.S. v. Abanto, G.R. No. 5266, February 16, 1910; U.S. v. Arceo, G.R. No. 1491, March 5, 1904*).

Examples of trespass by means of violence

1. Pushing the door violently and maltreating the occupants after entering.
2. Cutting of a ribbon string with which the door latch of a closed room was fastened. The cutting of the fastenings of the door was an act of violence.
3. Wounding by means of a bolo, the owner of the house immediately after entrance.

Examples of trespass by means of intimidation

1. Firing a revolver in the air by persons attempting to force their way into a house.
2. The flourishing of a bolo against inmates of the house upon gaining an entrance.

Trespass to dwelling may be committed by the owner of the house

In cases where the owner has allowed the rooms or the houses to be rented by other persons, trespass to dwelling is committed if the owner thereof enters the room or house without the knowledge and consent and against the will of the boarder or tenant.

Circumstances when the crime of trespass to dwelling is not committed (BAR 2006)

1. When the purpose of the entrance is to prevent serious harm to himself, the occupant or third persons.
2. When the purpose of the offender in entering is to render some service to humanity or justice.
3. Anyone who shall enter cafes, taverns, inns and other public houses while they are open.

Crimes that may be committed when a person trespasses a dwelling

1. If the purpose in entering the dwelling is not shown, trespass is committed.
2. If the purpose is shown, it may be absorbed in the crime as in robbery with force upon things, the trespass yielding to the more serious crime.
3. But if the purpose is not shown and while inside the dwelling he was found by the occupants, one of whom was injured by him, the crime committed will be trespass to dwelling and frustrated homicide, physical injuries, or if there was no injury, unjust vexation.

Q: At about 11:00 in the evening, Dante forced his way inside the house of Mamerto. Jay, Mamerto's son, saw Dante and accosted him.

Dante pulled a knife and stabbed Jay on his abdomen. Mamerto heard the commotion and went out of his room. Dante, who was about to escape, assaulted Mamerto. Jay suffered injuries which, were it not for the timely medical attendance, would have caused his death. Mamerto sustained injuries that incapacitated him for 25 days. What crime/s did Dante commit? (1994 Bar)

A: Dante committed qualified trespass to dwelling, frustrated homicide for the stabbing of Jay, and less serious physical injuries for the assault on Mamerto. The crime of qualified trespass to dwelling should not be complexed with frustrated homicide because when the trespass is committed as a means to commit a more serious crime, trespass to dwelling is absorbed by the greater crime and the former constitutes an aggravating circumstance of dwelling (*People v. Abedoza, 53 Phil 788*).

**OTHER FORMS OF TRESPASS TO DWELLING
ART. 281**

Elements

1. Offenders enter the closed premises or the fenced estate of another;

NOTE: The term *premises* signifies distinct and definite locality. It may mean a room, shop, building or definite area, but in either case, locality is fixed.

2. Entrance is made while either of them is uninhabited;

NOTE: A place is said to be *uninhabited* if there is no one living on such place.

3. Prohibition to enter is manifest; and
4. Trespasser has not secured the permission of the owner or the caretaker thereof.

Trespass to dwelling vis-à-vis trespass to property

BASIS	TRESPASS TO DWELLING	TRESPASS TO PROPERTY
<i>As to offender</i>	Offender is a private person.	Offender is any person.
<i>As to commission</i>	Offender enters a dwelling house.	Offender enters closed premises or fenced estate.



As to place	Place entered is inhabited.	Place entered is uninhabited.
As to act constituting the crime	Act constituting the crime is entering the dwelling against the will of the owner.	Act constituting the crime is entering the closed premises or the fenced estate without securing the permission of the owner or caretaker thereof.
As to prohibition	Prohibition to enter is express or implied.	Prohibition to enter must be manifest.

**GRAVE THREATS
ART. 282**

Punishable acts

1. Threatening another with the infliction upon his person, honor or property or that of his family of any wrong amounting to a crime and demanding money or imposing any other condition even though not unlawful, and the offender attained his purpose;
2. By making such threat without the offender attaining his purpose; and
3. By threatening another with the infliction upon his person, honor or property or that of his family of any wrong amounting to a crime, the threat, not being subject to a condition.

Essence of Grave Threats

It is essential that there be intimidation. In intimidation, there is a promise of some future harm or injury, either to the person, honor or property of the offended party. (Reyes, 2017)

It must inspire terror or fear upon another. It is characterized by moral pressure that produces alarm.

Threat

Threat is a declaration of an intention or determination to injure another by the commission upon his person, honor or property or upon that of his family of some wrong which may or may not amount to a crime.

Qualifying circumstance of the offense

If the threat is made in writing or through a middleman, the penalty is to be imposed in its maximum period.

Grave Threats vis-à-vis Light Threats

GRAVE THREATS	LIGHT THREATS
When the wrong threatened to be inflicted amounts to a crime.	When the wrong threatened to be inflicted does <i>not</i> amount to a crime.

Threat vis-à-vis Coercion

THREAT	COERCION
Essence of threat is intimidation.	Essence of coercion is violence or intimidation.
Wrong or harm done is future and conditional.	There is <i>no</i> condition involved; hence, there is <i>no</i> futurity in the harm or wrong done.

Threat vis-à-vis robbery

BASIS	THREAT	ROBBERY
As to intimidation	Intimidation is future and conditional.	Intimidation is actual and immediate.
	Intimidation may be through an intermediary.	Intimidation is personal.
As to subject involved	May refer to the person, honor or property.	Refers to personal property.
As to intent to gain	Intent to gain is not an essential element.	There is intent to gain.
As to danger of the threat	The danger to the victim is not instantly imminent nor the gain of the culprit immediate.	The danger involved is directly imminent to the victim and the obtainment of gain immediate.

**LIGHT THREATS
ART.283**

Elements

1. Offender makes a threat to commit a wrong;
2. The wrong does not constitute a crime;
3. There is a demand for money or that other condition is imposed, even though lawful; and
4. Offender has attained or has not attained his purpose.

NOTE: Light threat is in the nature of blackmailing.

Possible crimes involving blackmailing

1. *Light threats* – If there is no threat to publish any libelous or slanderous matter against the offended party.
2. *Threatening to publish a libel* – If there is such a threat to make a slanderous or libelous publication against the offended party.

**BONDS FOR GOOD BEHAVIOR
ART. 284**

The person making the threats under the preceding articles (grave and light threats) may also be required by the court to give bail conditioned upon the promise not to molest the person threatened or not to pursue the threats he/she made.

If the person making the threat failed to post a bond, such person can be sentenced to the penalty of *destierro*.

**OTHER LIGHT THREATS
ART. 285**

Punishable acts

1. Threatening another with a weapon, or by drawing such weapon in a quarrel, unless it be in lawful self-defense. Here, the weapon must not be discharged;
2. Orally threatening another, in the heat of anger, with some harm constituting a crime, without persisting in the idea involved in his threat; and
3. Orally threatening to do another any harm not constituting a felony.

NOTE: In *other light threats*, there is no demand for money nor any condition imposed when the offender threatens the offended party. His acts are limited to verbal threat during the incident involving him and the offended party.

Other Light Threats vis-à-vis Grave Threats

Other Light Threats	Grave Threats
The threat is made in the heat of anger, and the subsequent acts of the accused showed that he did not persist in the idea involved in his threat. (US vs. Paguirigan, 14 Phil. 453)	The threat is made with the deliberate purpose of creating in the mind of the person threatened the belief that the threats will be carried into effect. (supra)

Nature of other light threats

It is not subject to a demand for money or any material consideration and the wrong threatened does not amount to a crime.

**GRAVE COERCIONS
ART. 286**

Punishable acts

1. Preventing another, by means of violence, threat or intimidation, from doing something not prohibited by law; and
2. Compelling another, by means of violence, threat or intimidation, to do something against his will, whether it be right or wrong.

Elements (BAR, 1998, 1999, 2009)

1. A person prevented another from doing something not prohibited by law, or that he compelled him to do something against his will, be it right or wrong;
2. Prevention or compulsion be effected by violence, threats or intimidation; and

NOTE:The threat must be present, clear, imminent and actual. Such threat cannot be made in writing or through a middle man.

3. Person that restrained the will and liberty of another has no authority of law or the right to do so.

NOTE: Coercion is consummated even if the offended party did not accede to the purpose of the coercion. The essence of coercion is an attack on individual liberty.



Purpose of the law in punishing grave coercion

The main purpose of the statute in penalizing Grave Coercion is precisely to enforce the principle that no person may take the law into his own hands and that ours is a government of law and not of men (*People v. Mangosing, CA-G.R. No. 1107-R*).

When grave coercion occurs

Grave coercion arises only if the act which the offender prevented another to do is not prohibited by law or ordinance.

Kinds of grave coercion

1. *Preventive* – The offender uses violence to prevent the victim from doing what he wants to do. Here, the act prevented is not prohibited by law.
2. **NOTE:** In grave coercion, the act of preventing by force must be made at the time the offended party was doing or about to do the act to be prevented. If the act was already done when violence is exerted, the crime is unjust vexation.
3. *Compulsive* – The offender uses violence to compel the offended party to do what he does not want to do. The act compelled may or may not be prohibited by law.

No grave coercion when a person prohibits another to do an act because the act done is a crime, and violence and intimidation is employed

There is no grave coercion because the act from which a person is prevented from doing is a crime. It may only give rise to threat or physical injuries, if some injuries are inflicted.

However, in case of grave coercion where the offended party is being compelled to do something against his will, whether it be wrong or not, the crime of grave coercion is committed if violence or intimidation is employed in order to compel him to do the act.

Q: Isagani lost his gold necklace bearing his initials. He saw Roy wearing the said necklace. Isagani asked Roy to return to him the necklace as it belongs to him, but Roy refused. Isagani then drew his gun and told Roy, "If you will not give back the necklace to me, I will kill

you!" Out of fear for his life and against his will, Roy gave the necklace to Isagani. What offense did Isagani commit? (1998 Bar)

A: Isagani committed the crime of grave coercion (Art. 286, RPC) for compelling Roy, by means of serious threats or intimidation, to do something against the latter's will, whether it be right or wrong. Serious threats or intimidation approximating violence constitute grave coercion, not grave threats. Such is the nature of the threat in this case because it was committed with a gun, is a deadly weapon.

Qualifying circumstances of Grave Coercion

1. If the coercion is committed in violation of the exercise of the right of suffrage.
2. If the coercion is committed to compel another to perform any religious act.
3. If the coercion is committed to prevent another from performing any religious act.

**LIGHT COERCION
ART. 287**

Elements

1. Offender must be a creditor;
2. He seizes anything belonging to his debtor;
3. Seizure of the thing be accomplished by means of violence or a display of material force producing intimidation; and
4. Purpose of the offender is to apply the same to the payment of the debt.

In the crime of other light coercion or unjust vexation embraced in par. 2 of Art. 287, violence is absent. Thus, taking possession of the thing belonging to the debtor, through deceit and misrepresentation for the purpose of applying the same to the payment of debt is unjust vexation under the second paragraph of Art. 287.

Unjust Vexation (BAR 1994, 2006, 2007, 2009, 2010)

Unjust vexation is any act committed without violence but which unjustifiably annoys or vexes an innocent person.

NOTE: In determining whether the crime of unjust vexation is committed, the offender's act must have caused annoyance, irritation, vexation, torment, distress or disturbance to the mind of the person to whom it is directed.

Resulting crimes when the property of a debtor is seized

1. *Light coercion* – If by means of violence, the property is applied to the debt.
2. *Robbery* – If the value of the property seized is greater than that of the debt (intent to gain is present in this case) and violence and intimidation are employed.
3. *Estafa* – If there is no obligation on the part of the offended party but was only feigned. There is *estafa* because deceit is employed.

**COMPULSORY PURCHASE OF MERCHANDISE
AND PAYMENT OF WAGES BY MEANS OF
TOKENS
ART. 288****Punishable acts and their elements**

1. Forcing or compelling, directly or indirectly or knowingly permitting the act of forcing or compelling of the laborer or employee of the offender to purchase merchandise or commodities of any kind from him.

Elements:

- a. Offender is any person, agent or officer of any association or corporation;
- b. He or such firm or corporation has employed laborers or employees; and
- c. He forces or compels directly or indirectly, or knowingly permits to be forced or compelled, any of his or its laborers or employees to purchase merchandise or commodities of any kind from him or said firm or corporation.
(BAR 2014)

2. Paying the wages due his laborer or employee by means of tokens or objects other than the legal tender currency of the Philippines, unless expressly requested by such laborer or employee.

Elements:

- a. Offender pays the wages due a laborer or employee employed by him by means of tokens or object;
- b. Those tokens or objects are other than the legal currency of the Philippines; and
- c. Such employee or laborer does not expressly request that he be paid by means of tokens or objects.

NOTE: The use of tokens, promissory notes, vouchers, coupons, or any other form alleged

to represent legal tender is absolutely prohibited even when expressly requested by the employee.

**FORMATION, MAINTENANCE, AND
PROHIBITION OR COMBINATION OF CAPITAL
OR LABOR THROUGH VIOLENCE OR THREATS
ART. 289****Elements of the crime**

1. Offender employs violence or threats, in a degree as to compel or force the laborers or employees in the free legal exercise of their industry or work; and
2. Purpose is to organize, maintain or prevent coalitions of capital or labor, strike of laborers or lockout of employers.

The acts shall not constitute a more serious offense in accordance with the provisions of the Code.

**DISCOVERING SECRETS THROUGH SEIZURE OF
CORRESPONDENCE
ART. 290****Elements**

1. Offender is a private individual or even a public officer not in the exercise of his official function;
2. He seizes the papers or letters of another;
3. Purpose is to discover the secrets of such another person; and
4. Offender is informed of the contents of the papers or letters seized.

NOTE: It is not applicable to parents, guardians, or persons entrusted with the custody of minors with respect to papers or letters of the children or minors placed under the care or custody.

Nature of the crime

This is a crime against the security of one's papers and effects. The purpose must be to discover its effects. The act violates the privacy of communication. It is necessary that the offender should actually discover the contents of the letter.

NOTE: Contents of the correspondence need not be secret. Prejudice to the offended party is not an element of the offense.

"Seize" as contemplated in this article

There must be taking possession of papers or letters of another even for a short time only. If the papers or letters were delivered voluntarily to the accused, this crime is not committed.

Qualifying circumstance

When the offender reveals the contents of such paper or letters of another to a 3rd person, the penalty is higher.

Correlation of articles 230 (public officer revealing secrets of private individual) and 290 of the RPC

ART. 230	ART. 290
Public officer comes to know the secret of any private individual by reason of his office.	Offender is a private individual or even a public officer not in the exercise of his official function.
The secret is not necessarily contained in papers or letters.	It is necessary that the offender seizes the papers or letters of another to discover the secrets of the latter.
Reveals the secret without justifiable reason.	If there is a secret discovered, it is not necessary that it be revealed.

**REVEALING SECRETS WITH ABUSE OF OFFICE
ART. 291**

Elements

1. Offender is a manager, employee or servant;
2. He learns the secrets of his principal or master in such capacity; and
3. He reveals such secrets.

Damage is not an element of this article.

Essence of the crime of revealing secrets with abuse of office

The offender learned of the secret in the course of employment. He is enjoying a confidential relation with the employer or master so he should respect the privacy of matters personal to the latter.

**REVELATION OF INDUSTRIAL SECRETS
ART. 292**

Elements

1. Offender is a person in charge, employee or workman of a manufacturing or industrial establishment;
2. Manufacturing or industrial establishment has a secret of the industry which the offender has learned;

NOTE: The business secret must not be known to other business entities or persons. It is a matter to be discovered, known and used by and must belong to one person or entity exclusively. Secrets must relate to manufacturing process.

3. Offender reveals such secrets; and

NOTE: The revelation of the secret might be made after the employee or workman has ceased to be connected with the establishment.

4. Prejudice is caused to the owner.

CRIMES AGAINST PROPERTY

**ROBBERY
ART. 293**

Robbery (BAR 1998)

It is the taking of personal property belonging to another, with intent to gain, by means of violence against or intimidation of any person or using force upon anything.

NOTE: For the appellant to be guilty of consummated robbery, there must be incontrovertible proof that property was taken from the victim. The appellant is guilty of attempted robbery only when he commences the commission of robbery directly by overt acts and does not perform all the acts of execution which would produce robbery by reason of some causes or accident other than his own spontaneous desistance.

Illustration: In a case, Totoy demanded from the victim, "Tol, pera-pera lang ito, dahil kailangan lang." The victim refused to part with his earnings and resisted. He even tried to get out of the taxicab but Totoy pulled him back and stabbed him. Randy, Rot-Rot and Jon-Jon followed suit and stabbed the victim with their bladed weapons. The victim was able to flee from the vehicle without anything being taken from him. Totoy and his confederates commenced by overt acts the execution of the robbery, but failed to perform all the acts of execution by reason of the victim's resistance (*People v. Bocalan, G.R. No. 141527, September 4, 2003*).

Classification of robbery

1. Robbery with violence against, or intimidation of persons (*Arts. 294, 297, and 298*)
2. Robbery by the use of force upon things (*Arts. 299 and 302*).

Elements of robbery in general

1. There is personal property belonging to another; (**BAR 1992, 1996**)
2. There is unlawful taking of that property;
3. Taking must be with intent to gain; and
4. There is violence against or intimidation of any person or force upon things. (**BAR 1992, 2002, 2005**)

NOTE: Robberies committed in different houses constitute separate crimes of robbery. But if the

robberies are committed upon different victims on the same occasion and in the same place only one robbery is committed as the robberies are mere incidents of a single criminal intent.

Personal property is the subject of Robbery

The property taken must be personal property, for if real property is occupied by means of violence against or intimidation of person, the crime is usurpation (*Art. 312*).

Q: Is Robbery committed when police officers seized the opium without causing the prosecution of the offenders, and thereafter said police officers appropriated the opium?

A: YES. The person from whom the property was taken need not be the owner of such. Legal possession is sufficient (*U.S. v. Sana Lim, G.R. No. 9604, November 19, 1914*).

Generally identity of real owner is not necessary

GR: The identity of the real owner is not necessary so long as the personal property taken does not belong to the accused.

XPN: If the crime is Robbery with Homicide

Presumption of intent to gain

In unlawful taking of personal property intent to gain is presumed.

The element of personal property belonging to another and that of intent to gain must concur.

Occurrence of violence and intimidation

GR: Violence or intimidation must be present **before** the taking of personal property is complete.

XPN: But when violence results in homicide, rape intentional mutilation or any of the serious physical injuries penalized under pars. 1 and 2 of Art 263, the taking of the personal property is robbery complexed with any of those crimes under Art. 294, even if the taking was already complete when the violence was used by the offender.



Unlawful taking

It means appropriating a thing belonging to another and placing it under one's control and possession.

The property must belong to another. Thus, one who, by means of violence or intimidation took his own property from the depositary is not guilty of robbery.

The taking of personal property must be unlawful to constitute robbery. If the property is in possession of the offender given to him in trust by the owner, the crime is *estafa*. Also, the unlawful taking must not be under the claim of title or ownership.

Unlawful taking is complete when

1. ***As to robbery with violence against or intimidation of persons***– from the moment the offender gains possession of the thing even if the culprit has had no opportunity to dispose of the same, the unlawful taking is complete
2. ***As to robbery with force upon things***– the thing must be taken out of the building/premises to consummate the crime

Robbery with Violence, Grave Threats, and Grave Coercion distinguished

ROBBERY	GRAVE THREATS	GRAVE COERCION
There is intent to gain	No intent to gain	No intent to gain
Immediate harm	Intimidation; Promises some future harm or injury	Intimidation is immediate and offended party is compelled to do something against his will.

Robbery vis-à-vis Bribery

ROBBERY	BRIBERY
The victim is deprived of his money or property by force or intimidation	He parts with his money, in a sense, voluntarily

**ROBBERY WITH VIOLENCE AGAINST OR
INTIMIDATION OF PERSONS
ART. 294**

Punishable acts under Art. 294 (BAR 2000, 2005, 2010)

1. When by reason or on occasion of the robbery the crime of homicide is committed
2. When the robbery is accompanied by:
 - a. Rape
 - b. Intentional mutilation
 - c. Arson
3. When by reason or on the occasion of such robbery, any of the physical injuries resulting in:
 - a. Insanity
 - b. Imbecility
 - c. Impotency
 - d. Blindness is inflicted
4. When by reason or on the occasion of robbery, any of the physical injuries resulting in the:
 - a. Loss of the use of speech
 - b. Loss of the power to hear or to smell
 - c. Loss of an eye, a hand, a foot, an arm or a leg
 - d. Loss of the use of any of such member
 - e. Incapacity for the work in which the injured person is theretofore habitually engaged is inflicted
5. If the violence or intimidation employed in the commission of the robbery is carried to a degree clearly unnecessary for the commission of the crime.
6. When in the course of its execution, the offender shall have inflicted upon any person not responsible for the commission of the robbery any of the physical injuries in consequence of which the person injured:
 - a. Becomes deformed
 - b. Loses any other member of his body
 - c. Loses the use thereof
 - d. Becomes ill or incapacitated for the performance of the work in which he is habitually engaged for more than 90 days
 - e. Becomes ill or incapacitated for labor for more than 30 days
7. If the violence employed by the offender does not cause any of the serious physical injuries defined in Art.263, or if the offender employs intimidation only.

The crime defined in this article is a *special complex crime*.

ROBBERY WITH HOMICIDE**Robbery with homicide (BAR 2009, 2014)**

If death results or even accompanies a robbery, the crime will be robbery with homicide provided that the robbery and the homicide are consummated. The crime of robbery with homicide is a special complex crime or a single indivisible crime. The killings must have been perpetrated by reason or on the occasion of robbery. As long as the homicide resulted, during, or because of the robbery, even if the killing is by mere accident, robbery with homicide is committed (*People v. Comiling, G.R. No. 140405, March 4, 2004*).

NOTE: Even if the killing preceded or was done ahead of the robbing, whether intentional or not, the crime is robbery with homicide. If aside from homicide, rape or physical injuries are also committed by reason or on the occasion of the robbery, the rape or physical injuries are considered aggravating circumstances in the crime of robbery with homicide. Whenever homicide is committed as a consequence of or on the occasion of a robbery, all those who took part as principals in the commission of the crime will also be guilty as principals in the crime of robbery with homicide.

Elements

1. The taking of personal property with violence or intimidation against persons;
2. The property taken belongs to another;
3. The taking was done with *animo lucrandi*; and
4. On the occasion of the robbery or by reason thereof, homicide was committed (*People v. Baccay, 284 SCRA 296; People v. Mantung, G.R. No. 130372, July 20, 1999*).

NOTE: Homicide as used in paragraph (1) of Article 294 is to be understood in its generic sense as to include *parricide* and *murder*.

Intent to commit robbery must precede the killing

The offender must have the intent to take personal property before the killing.

Intent to kill not necessary

In robbery with homicide, the law does not require that the homicide be committed with

intent to kill, the crime exists even though there is no intention to commit homicide.

Q: On the occasion of the robbery, the storeowner, a septuagenarian, suffered a stroke due to the extreme fear which directly caused his death when the robbers pointed their guns at him. Was there robbery with homicide?

A: YES. It is immaterial that death supervened as a mere accident as long as the homicide was produced by reason or on the occasion of the robbery, because it is only the result which matters, without reference to the circumstances, or causes, or persons intervening in the commission of the crime which must be considered (*People v. Domingo, G.R. No. 82375, April 18, 1990*).

Q: A, B, C committed robbery in the house of Angelica. Simeon, the houseboy of Angelica put up a fight. He tried to wrest the gun from the hand of A. In the process, the gun fired hitting A who died as a result. Who is liable for the death of A? And what crime is committed?

A: B and C are liable for Robbery with Homicide. Simeon is not liable because his act is in accordance with law. The crime applies to the robbers themselves. The death of their companion A was by reason or on the occasion of robbery.

Q: Suppose the victims were killed, not for the purpose of committing robbery and the idea of taking the money and other personal property of the victims was conceived by the culprits only after killing. Is this a case of robbery with homicide?

A: NO, because the intention of the perpetrators is really to kill the victim and robbery came only as an afterthought. The perpetrators are liable for two separate crimes of robbery and homicide or murder, (qualified by abuse of superior strength) (*People v. Domingo, G.R. No. 82375, April 18, 1990*).

NOTE: There is no crime of robbery in band with murder or robbery with homicide in band or robbery with multiple homicides. If on the occasion of the robbery with homicide, robbery with force upon things was also committed, the crime committed would not only be one robbery but also a complex crime of robbery with homicide and robbery with force upon things.

Q: Jervis and Marlon asked their friend, Jonathan, to help them rob a bank. Jervis and Marlon went inside the bank, but were unable to get any money from the vault because the same was protected by a time-delay mechanism. They contended themselves with the customer's

cellphones and a total of P5,000 in cash. After they dashed out of the bank and rushed into the car, Jonathan pulled the car out of the curb, hitting a pedestrian which resulted in the latter's death. What crime or crimes did Jervis, Marlon and Jonathan commit? Explain your answer. (BAR 2007)

A: Jervis and Marlon committed the crime of robbery, while Jonathan committed the special complex crime of robbery with homicide.

Jervis and Marlon are criminally liable for the robbery only because that was the crime conspired upon and actually committed by them, assuming that the taking of the cellphones and the cash from the bank's customers was effected by intimidation. They will not incur liability for the death of the pedestrian because they have nothing to do with it. Only Jonathan will incur liability for the death of the pedestrian, aside from the robbery, because he alone brought about such death. Although the death caused was not intentional but accidental, it shall be a component of the special complex crime of robbery with homicide because it was committed in the course of the commission of the robbery.

No crime of robbery with multiple homicide (BAR 1995, 2007, 2009)

There is no crime of robbery with multiple homicide under the RPC. The crime is robbery with homicide notwithstanding the number of homicides committed on the occasion of the robbery and even if murder, physical injuries and rape were also committed on the same occasion (*People v. Hijada, G.R. No. 123696, March 11, 2004*).

Q: Is there such a crime as robbery with murder?

A: Treachery cannot be considered as qualifying circumstance of murder, because the crime charged is the special crime of robbery with homicide. The treachery which attended the commission of the crime must be considered not as qualifying but merely as a generic aggravating circumstance (*People v. Mantawar, et al., 80 Phil. 817; People v. Abang, G.R. No. L-14623, December 29, 1960*).

NOTE: When in the course of the robbery someone is killed but rape and arson are also committed the crime is still Robbery with Homicide. The rape and arson can be appreciated as aggravating circumstance (*Estrada, 2011*).

ROBBERY WITH RAPE

Robbery with rape (BAR 1996, 1999, 2003, 2004)

The crime of robbery with rape is a crime against property which is a single indivisible offense. The rape accompanies the robbery. In a case where rape and not homicide is committed, there is only a crime

of robbery with rape if both the robbery and the rape are consummated.

NOTE: Although the victim was raped twice on the occasion of Robbery, the additional rape is not considered as an aggravating circumstance in the crime of robbery and rape. There is no law providing for the additional rape/s or homicide/s for that matter to be considered as aggravating circumstance. It further observed that the enumeration of aggravating circumstances under Art. 14 of the Revised Penal Code is exclusive, unlike in Art. 13 of the same Code, which enumerates the mitigating circumstances where analogous circumstances may be considered (*People v. Regala, G.R. No. 130508, April 5, 2000; People v. Sultan, G.R. No. 132470, April 27, 2000*).

Elements

1. The taking of personal property is committed with violence or intimidation against persons;
2. The property taken belongs to another;
3. The taking is characterized by intent to gain or *animus lucrandi*; and
4. The robbery is accompanied by rape.

For a conviction of the crime of robbery with rape to stand, it must be shown that the rape was committed *by reason or on the occasion of* a robbery and not the other way around. This special complex crime under Art. 294 of the RPC contemplates a situation where the original intent of the accused was to take, with intent to gain, personal property belonging to another and rape is committed on the occasion thereof or as an accompanying crime (*People v. Gallo, G.R. No. 181902, August 31, 2011*).

Q: In case there is conspiracy, are all conspirators liable for the crime of robbery with rape?

A: YES. In *People v. Suyu*, it was ruled that once conspiracy is established between several accused in the commission of the crime of robbery, they would all be equally culpable for the rape committed by anyone of them on the occasion of the robbery, unless anyone of them proves that he endeavored to prevent the others from committing rape (*People v. Gallo, ibid.*).

Q: Together XA, YB and ZC planned to rob Miss OD. They entered her house by breaking one of the windows in her house. After taking her personal properties and as they were about to leave, XA decided on impulse to rape OD. As XA was molesting her, YB and ZC stood outside the door of her bedroom and did nothing to prevent XA from raping OD. What crime or crimes did XA, YB and ZC commit, and what is the criminal liability of each? (BAR 2004)

A: The crime committed by XA, YB and ZC is the composite crime of robbery with rape, a single, indivisible offense under Art. 294(1) of the RPC.

Although the conspiracy among the offenders was only to commit robbery and only XA raped CD, the other robbers, YB and ZC, were present and aware of the rape being committed by their co-conspirator. Having done nothing to stop XA from committing the rape, YB and ZC thereby concurred in the commission of the rape by their co-conspirator XA.

The criminal liability of all, XA, YB and ZC, shall be the same, as principals in the special complex crime of robbery with rape which is a single, indivisible offense where the rape accompanying the robbery is just a component.

Criminal intent to gain precedes intent to rape

The law does not distinguish whether rape was committed before, during or after the robbery. It is enough that the robbery accompanied the rape. Robbery must not be a mere accident or afterthought.

Illustration: Where 6 accused entered the house of the offended party, brandishing firearms and knives and after ransacking the house for money and jewelry, brought the offended party out of the house to a grassy place where she was ordered to undress and although she was able to run away, was

chased and caught, and thereafter raped by all of the accused, the latter committed robbery with rape (*People v. Villagracia, G.R. No. 94311, September 14, 1993*).

Instances when there could be a separate crime of robbery and rape

If the two (2) crimes were separated both by time and space, there is no complex crime of Robbery with Rape (*People v. Angeles, G.R. No. 104285-86, May 21, 1993*).

Q: Can there be such a crime as robbery with attempted rape?

A: The crime cannot be a complex crime of robbery with attempted rape under Article 48, because a robbery cannot be a necessary means to commit attempted rape; nor attempted rape, to commit robbery (*People v. Cariaga, C.A., 54 O.G. 4307*).

ROBBERY WITH PHYSICAL INJURIES

Physical injuries must be serious

To be considered as such, the physical injuries must always be *serious*. If the physical injuries are only less serious or slight, they are absorbed in the robbery. The crime becomes merely robbery. But if the less serious physical injuries were committed after the robbery was already consummated, there would be a separate charge for the less serious physical injuries. It will only be absorbed in the robbery if it was inflicted in the course of the execution of the robbery. The same is true in the case of slight physical injuries.

Q: Suppose a gang robbed a mansion in Forbes Park. On the occasion of the robbery, physical injuries were inflicted on the household members. The robbers also detained the children to compel their parents to come out with the money. What crime/s is/are committed by the robbers?

A: The detention was a necessary means to facilitate the robbery. Thus, the offenders will be held liable for the complex crimes of robbery with serious physical injuries and serious illegal detention. But if the victims were detained because of the timely arrival of the police, such that the offenders had no choice but to detain the victims as hostages in exchange for their safe

passage, the detention is absorbed by the crime of robbery and is not treated as a separate crime.

**ROBBERY WITH ARSON
(RA 7659)**

Commission of composite crime

The composite crime would only be committed if the **primordial intent** of the offender is to commit robbery and there is no killing, rape, or intentional mutilation committed by the offender during the robbery. Otherwise, the crime would be robbery with homicide, or robbery with rape, or robbery with intentional mutilation, in that order and the arson would only be an aggravating circumstance.

Robbery must precede arson

It is essential that robbery precede the arson, as in the case of rape and intentional mutilation, because the amendment included arson among the rape and intentional mutilation which have accompanied the robbery.

NOTE: Arson has been made a component only of robbery with violence against or intimidation of persons but not of robbery by the use of force upon things. Hence, if the robbery was by the use of force upon things and therewith arson was committed, two distinct crimes are committed.

OTHER CASES OF SIMPLE ROBBERY

Any kind of robbery with less serious physical injuries or slight physical injuries falls under this specie of robbery.

NOTE: But where there is no violence exerted to accomplish the snatching, the crime committed is not robbery but simple theft.

There is sufficient intimidation where the acts of the offender inspired fear upon the victim although the accused was not armed.

**ROBBERY WITH PHYSICAL INJURIES,
COMMITTED IN AN UNINHABITED PLACE AND
BY A BAND, OR WITH THE USE OF FIREARM ON
A STREET, ROAD OR ALLEY
ART. 295**

Qualifying circumstances

If committed:

1. In an uninhabited place;
2. By a band;

3. By attacking a moving train, street car, motor vehicle, or airship;
4. By entering the passengers' compartments in a train, or in any manner taking the passengers thereof by surprise in the respective conveyances; or
5. On a street, road, highway, or alley, and the intimidation is made with the use of firearms, the offender shall be punished by the maximum periods of the proper penalties prescribed in Art. 294.

Any of these five qualifying circumstances of robbery with physical injuries or intimidation must be alleged in the information and proved during the trial.

Application of this article in other cases

This article does not apply in cases of Robbery with homicide, robbery with intentional mutilation, robbery with rape and robbery with serious physical injuries resulting in insanity, imbecility, impotency or blindness. This is because the Article omitted these crimes in the enumeration (*Reyes, 2008*).

**ROBBERY COMMITTED BY A BAND
ART. 296**

Robbery committed by a band (BAR 2010)

Robbery is committed by a band when **at least 4 armed malefactors** take part in the commission of a robbery.

NOTE: If any unlicensed firearm is used, the penalty imposed upon all the malefactors shall be the maximum of the corresponding penalty provided by law, without prejudice to the criminal liability for illegal possession of such firearms. This is a special aggravating circumstance applicable only in a case of robbery in band.

Liability for the acts of the other members of the band

A member of the band is liable for any of the assaults committed by the other members thereof, when the following requisites concur:

- a. That he was a member of the band
- b. That he was present at the commission of a robbery by that band
- c. That the other members of the band committed an assault
- d. That he did not attempt to prevent the assault

In *Robbery by a band*, all are liable for any assault committed by the band, unless one or some attempted to prevent the assault.

**ATTEMPTED AND FRUSTRATED ROBBERY
COMMITTED UNDER CERTAIN
CIRCUMSTANCES
ART. 297**

Application of this article

It applies when homicide is committed on the occasion of an attempted or frustrated robbery.

The term homicide is used in a generic sense. It includes murder, parricide and infanticide.

The clause "unless the homicide committed shall deserve a higher penalty under the provisions of this code" may be illustrated thus: In an attempted or frustrated robbery, the killing of the victim is qualified by treachery or relationship. The proper penalty for murder or parricide shall be imposed because it is more severe.

**EXECUTION OF DEEDS BY MEANS OF
VIOLENCE OR INTIMIDATION
ART. 298**

Elements (BAR 2001)

1. Offender has intent to defraud another;
2. Offender compels him to sign, execute, or deliver any public instrument or document; and
3. Compulsion is by means of violence or intimidation.

Applies even if the document signed, executed or delivered is a private or commercial document.

Robbery by execution of deeds vis-à-vis Grave coercion

ROBBERY BY EXECUTION OF DEEDS	GRAVE COERCION
There is an intent to gain	No intent to gain
There is an intent to defraud	There is no intent to defraud

This article would not apply if the document is void.

**ROBBERY IN AN INHABITED HOUSE OR PUBLIC
BUILDING OR EDIFICE DEVOTED TO WORSHIP
ART. 299**

Elements of the 1st kind of robbery with force upon things under Art. 299

1. Offender entered an inhabited house, or public building, or edifice devoted to religious worship; **(BAR 1992, 2007, 2008)**
2. Entrance was effected by any of the following means:
 - a. Through an opening not intended for entrance or egress;
 - b. By breaking any wall, roof, or floor or breaking any door or window; **(BAR 2000)**
 - c. By using false keys, picklocks or similar tools, or
 - d. By using any fictitious name or pretending the exercise of public authority.

The whole body of culprit must be inside the building to constitute entering.

3. Once inside the building, the offender took personal property belonging to another with intent to gain.

Force upon things

It requires some element of trespass into the establishment where the robbery was committed; *e.g.* the offender must have entered the premises where the robbery was committed.

If no entry was effected, even though force may have been employed in the taking of the property from within the premises, the crime will only be theft.

Public building

It refers to every building owned by the Government or belonging to a private person but used or rented by the Government, although temporarily unoccupied by the same.

Inhabited house

It refers to any shelter, ship or vessel constituting the dwelling of one or more persons even though the inhabitants thereof are temporarily absent therefrom when the robbery is committed.



Dependencies

It consists of all interior courts, corrals, warehouses, granaries, barns, coach houses, stables, or other departments, or enclosed interior entrance connected therewith and which form part of the whole. Orchards and other lands used for cultivation or production are not included, even if closed, contiguous to the building, and having direct connection therewith.

Requisites:

- a. It must be contiguous to the building;
- b. It must have an interior entrance connected therewith; and
- c. It must form part of the whole.

Illustration: A small store located on the ground floor of a house is a dependency of the house, there being no partition between the store and the house, and in going to the main stairway, one has to enter the store which has a door (U.S. v. Ventura, G.R. No. 13715, January 22, 1919).

False keys

Genuine keys stolen from the owner or any keys other than those intended by the owner for use in the lock forcibly opened by the offender.

Elements of the 2nd kind of robbery with force upon things under Art. 299

1. Offender is inside a dwelling house, public building or edifice devoted to religious worship, regardless of circumstances under which he entered it; and
2. Offender takes personal property belonging to another, with intent to gain, under any of the following circumstances:

- a. By the breaking of doors, wardrobes, chests, or any other kind of locked or sealed furniture or receptacle, or door.

NOTE: *Door* refers only to “doors, lids or opening sheets” of furniture or other portable receptacles, not to inside doors of house or building.

- b. By taking such furniture or objects away to be broken or forced open outside the place of the robbery.

NOTE: The crime committed would be *estafa* or theft, if the locked or sealed

receptacle is forced open in the building where it is kept and not taken away to be broken outside.

**ROBBERY IN AN UNINHABITED PLACE
AND BY A BAND
ART. 300**

Robbery mentioned in this article, if committed in an uninhabited place or by a band, shall be punished by the maximum period of the penalty provided therefor.

Robbery with force upon things (*Art. 299*), in order to be *qualified*, must be committed in an uninhabited place *and* by a band (*Art. 300*) while robbery with violence against or intimidation of persons must be committed in an uninhabited place *or* by a band (*Art. 295*).

**ROBBERY IN AN UNINHABITED PLACE OR IN A
PRIVATE BUILDING
ART. 302**

Elements

1. Offender entered an uninhabited place or a building which was not a dwelling house, not a public building, or not an edifice devoted to religious worship;
2. Any of the following circumstances was present:
 - a. Entrance was effected through an opening not intended for entrance or egress

NOTE: If the entrance was made through the door which was open, or closed but unlocked, and not through the window, the person who took personal property from the house with intent to gain is guilty only of theft and not robbery. Where an opening created by the accidental bumping of a vehicle in the store’s wall was made the entrance of the malefactor, the taking of the personal property inside the store is robbery and not theft because the hole is not intended for entrance or egress.

- b. Wall, roof, floor, or outside door or window was broken

NOTE: Like Robbery in an inhabited house, the breaking should be made in order to effect the entrance into the place. So if the wall, roof, floor etc. was broken

in the course of escaping, the act committed is not Robbery.

- c. Entrance was effected through the use of false keys, picklocks or other similar tools
- d. Door, wardrobe, chest, or any sealed or closed furniture or receptacle was broken
- e. Closed or sealed receptacle was removed, even if the same be broken open elsewhere

NOTE: Under letters *d* and *e*, the robber did not enter through a window or effected entrance by breaking the floor, door, wall, etc., otherwise these circumstances by themselves already make the act as that of robbery. In these 2 cases, the robbers entered through the door, and once inside, broke wardrobe, sealed or close receptacles etc., or took away closed or sealed receptacle to be broken elsewhere.

- 3. With intent to gain, the offender took therefrom personal property belonging to another.

Breaking of a padlock is use of force upon things. The crime committed by the accused who entered in a warehouse by *breaking the padlock* of the door and took away personal property is robbery (*People v. Mesias*, 38 O.G. No. 23).

Building

The term building includes any kind of structure used for storage or safekeeping of personal property, such as (a) *freight car* and (b) *warehouse* (*U.S. v. Magsino*, G.R. No. 1339, November 28, 1903; *US v. Roque, et al.*, 4 Phil 242).

Instances of committing robbery in a store and crime committed

- 1. If the store is used as a dwelling of one or more persons, the robbery committed therein would be considered as committed in an inhabited house under Art. 299 (*People v. Suarez*, G.R. No. L-6431, March 29, 1954).
- 2. If the store was not actually occupied at the time of the robbery and was not used as a dwelling, since the owner lived in a separate house, the robbery committed therein is punished under Art. 302 (*People v. Silvestre*, 34 O.G. 1535).

- 3. If the store is located on the ground floor of the house belonging to the owner, having an interior entrance connected therewith, it is a
- 4. dependency of an inhabited house and the robbery committed therein is punished under the last paragraph of Art. 299 (*US v. Tapan*, G.R. No. 6504, September 11, 1911).

ROBBERY OF CEREALS, FRUITS, OR FIREWOOD IN AN UNINHABITED PLACE OR PRIVATE BUILDING ART. 303

Application

This applies when the robbery was committed by the use of force upon things, without violence against or intimidation of any person in an inhabited house, public building, or edifice devoted to religious worship (Art. 299) or in an uninhabited place or private building (Art. 302).

The place where the robbery is committed under Article 302 must be a building which is not an inhabited house or public building or edifice to religious worship.

POSSESSION OF PICKLOCKS OR SIMILAR TOOLS ART. 304

Elements (BAR 2009)

- 1. Offender has in his possession picklocks or similar tools;
- 2. Such picklocks or similar tools are specially adopted to the commission of robbery; and
- 3. Offender does not have lawful cause for such possession.

FALSE KEYS ART. 305

False keys

- 1. Picklocks or similar tools
- 2. Genuine keys stolen from the owner
- 3. Any key other than those intended by the owner for use in the lock forcibly opened by the offender.

Possession of false keys in pars. 2 and 3 above are not punishable. If the key was entrusted to the offender and he used it to steal, the crime committed is not robbery but theft.



**BRIGANDAGE
ART. 306**

Brigandage

There is brigandage when the following requisites are present:

1. There be at least 4 armed malefactors
2. They formed a band of robbers
3. The purpose is any of the following:
 - a. To commit robbery in the highway
 - b. To kidnap persons for the purpose of extortion or to obtain ransom
 - c. To attain by means of force and violence any other purpose

Essence of brigandage

Brigandage is a crime of depredation wherein the unlawful acts are directed not only against specific, intended or preconceived victims, but against any and all prospective victims anywhere on the highway and whoever they may potentially be.

Robbery in band vis-à-vis Brigandage under Art. 306

BASIS	ROBBERY BY A BAND	BRIGANDAGE UNDER ART. 306
<i>Purpose</i>	Purpose is to commit robbery not necessarily in highways.	Purpose is to commit robbery in highway; or to kidnap a person for ransom or any other purpose attained by force and violence.
<i>Commission of the crime</i>	Actual commission of robbery is necessary.	Mere formation is punished.
<i>Preconceived victim</i>	There is always a preconceived victim.	It may be committed even without a preconceived victim.

The main object of the Brigandage Law is to prevent the formation of bands of robbers. The heart of the offense consists in the formation of a band by more than three armed persons for the purpose indicated in Art. 306. Such formation is sufficient to constitute a violation of Art. 306.

On the other hand, if robbery is committed by a band, whose members were not primarily organized for the purpose of committing robbery or kidnapping, etc., the crime would not be brigandage but only robbery (*People v. Puno, G.R. No. 97471, February 17, 1993*).

Highway robbery under PD 532

Highway robbery or brigandage is the seizure for ransom, extortion or other unlawful purposes or the taking away of property of another by means of violence against or other unlawful means, committed by any person on any Philippine Highway.

Any person who aids or protects highway robbers or abets the commission of highway robbery or brigandage shall be considered as an accomplice.

NOTE: *Philippine highway* shall refer to any road, street, passage, highway and bridges or other parts thereof, or railway or railroad within the Philippines used by persons, or vehicles, or locomotives or trains for the movement or circulation of persons or transportation of goods, articles, or property or both.

Gravamen of highway robbery/brigandage under Presidential Decree No. 532

The Supreme Court pointed out that the purpose of brigandage is, inter alia, **indiscriminate highway robbery**. And that PD 532 punishes as highway robbery or brigandage only acts of robbery perpetrated by outlaws indiscriminately against any person or persons on a Philippine highway as defined therein, not acts committed against a predetermined or particular victim (*People v. Puno, G.R. No. 97471, February 17, 1993*).

NOTE: In *US v. Feliciano, 3 Phil. 422*, it was pointed out that highway robbery or brigandage is more than ordinary robbery committed on a highway. The purpose of brigandage is indiscriminate robbery in highways. If the purpose is only a particular robbery, the crime is only robbery or robbery in band, if there are at least four armed participants.

PD 532 (Highway Robbery) vis-à-vis Brigandage under Art. 306

PD 532	BRIGANDAGE IN RPC
Crime must be committed.	Mere formation of band is punishable.
One malefactor will suffice.	At least 4 armed malefactors.
Indiscriminately committed against persons.	Committed against predetermined victims.
The offender is a brigand who roams in public highways and carries out his robbery in public highways.	The commission of robbery is only incidental and the offender is not a brigand.

**AIDING AND ABETTING A BAND OF BRIGANDS
ART. 307**

Elements

1. There is a band of brigands;
2. Offender knows the band to be of brigands; and
3. Offender does any of the following acts:
 - a. He in any manner aids, abets or protects such band of brigands;
 - b. He gives them information of the movements of the police or other peace officers of the government; or
 - c. He acquires or receives the property taken by such brigands.

**THEFT
ART. 308**

Theft

Theft is committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.

Persons liable (BAR 1995, 1998, 2000, 2008, 2009)

1. Those who, with intent to gain, but without violence against or intimidation of persons nor force upon things, take personal property of another without the latter's consent;

2. Those who having found lost property, fail to deliver the same to the local authorities or to its owner; (**BAR, 1998, 2001**)

NOTE: Lost property includes stolen property so that the accused who found a stolen horse is liable if he fails to deliver the same to the owner or to the authorities since the term "lost" is generic in nature and embraces loss by stealing or by any act of a person other than the owner as well as by the act of the owner himself through same casual occurrence (*People v. Rodrigo, G.R. No. L-18507, March 31, 1966*).

Finder in fact

A person who finds a lost item. The case of the finder of a lost property affirms the fact that the offender obtains only physical possession of the thing. The finder in fact has an obligation to deliver the property to the owner if known, otherwise, surrender the property to the authorities.

Finder in law

An officer of the law whom a lost item is surrendered or turned over,

3. Those who after having maliciously damaged the property of another, remove or make use of the fruits or object of the damage caused by them;
5. Those who enter an enclosed estate or a field where trespass is forbidden or which belongs to another and, without the consent of its owner, hunt or fish upon the same or gather fruits, cereals or other forest or farm products; or

Elements

1. There is taking of personal property;
2. Property taken belongs to another;
3. Taking was done with intent to gain;
4. Taking was done without the consent of the owner; and
5. Taking is accomplished without the use of violence against or intimidation of persons of force upon things (*Baltazar v. People, G.R. No. 164545, November 20, 2006*).

Illustration: While praying in church, A felt and saw his wallet being taken by B, but because of the solemnity of the proceedings, did not make



any move; while the taking was with his knowledge, it was without his consent, and Theft is committed.

“Taking”

It means the act of depriving another of the possession and dominion of movable property. The taking must be accompanied by the intention, at the time of the taking, of withholding the thing with some character of permanency.

In the case of *Pit-og v. People* (G.R. No. 76539, October 11, 1990), the Court acquitted the petitioner who took the sugarcane and bananas believing them to be her own, due to the absence of criminal intent to gain.

Ownership in theft, immaterial

Ownership is immaterial in theft. The subject of the crime of theft is any personal property belonging to another. Hence, as long as the property taken does not belong to the accused who has a valid claim thereover, it is immaterial whether said offender stole it from the owner, a mere possessor, or even a thief of the property (*Miranda v. People*, G.R. No. 176298, January 25, 2012).

Illustration: Where the finder of the lost or mislaid property entrusts it to another for delivery to a designated owner, the person to whom it is thus confided, assumes by voluntary substitution, as to both the property and the owner, the same relation as was occupied by the finder. If he misappropriates it, he is guilty of Theft as if he were the actual finder of the same (*People v. Avila*, G.R. No. 19786, March 31, 1923).

Q: Mario found a watch in a jeep he was riding, and since it did not belong to him, he approached policeman P and delivered the watch with instruction to return the same to whoever may be found to be the owner. P failed to return the watch to the owner and, instead, sold it and appropriated for himself the proceeds of the sale. Charged with theft, P reasoned out that he cannot be found guilty because it was not he who found the watch and moreover, the watch turned out to be stolen property. Is P's defense valid? (BAR 1998)

A: NO, it is not valid. In a charge for theft, it is enough that the personal property subject thereof belongs to another and not to the offender. It is irrelevant whether the person deprived of the

possession of the watch has or has no right to the watch. Theft is

committed by one who, with intent to gain, appropriates property of another without the consent of its owner. And the crime is committed even when the offender receives property of another but acquires only physical possession to hold the same. P is a finder in law liable for theft not *estafa*.

Test to determine whether an object can be the subject of theft

The test of what is the proper subject of larceny seems to be not whether the subject is corporeal but whether it is capable of appropriation by another.

NOTE: In the old ruling, when a person stole a check but was not able to use the same because the check bounced, he shall be guilty of the crime of *theft*, according to the value of the parchment. In the new ruling, following under the same circumstances, he shall be guilty of an *impossible crime* (*Jacinto v. People of the Philippines*, G.R. No. 162540, July 13, 2009).

Complete unlawful taking

Unlawful taking is deemed complete from the moment the offender gains possession of the thing, even if he has no opportunity to dispose of the same.

Immateriality of carrying away of the thing taken

In theft, it is not required for the thief to be able to carry away the thing taken from the owner. The consummation of this crime takes place upon the voluntary and malicious taking of the property which is realized upon the material occupation of the taking, that is, when he had full possession thereof even if he did not have the opportunity to dispose of the same.

Proof that the accused is in possession of a recently stolen property gives rise to a valid presumption that he stole the property.

No crime of frustrated theft

Unlawful taking, which is the deprivation of one's personal property, is the element which produces the felony in its consummated stage. At the same time, without unlawful taking as an act of execution, the offense could only be attempted theft, if at all. With these considerations, under

Article 308 of the RPC, theft cannot have a frustrated stage. Theft can only be attempted or consummated (*Valenzuela v. People, G.R. No. 160188, June 21, 2007*).

NOTE: The ability of the offender to freely dispose of the property stolen is not a constitutive element of the crime of theft. Such factor runs immaterial to the statutory definition of theft, which is the taking, with intent to gain, of personal property of another without the latter's consent.

Theft vis-à-vis Estafa

THEFT	ESTAFA
The crime is theft if only the physical or material possession of the thing is transferred.	Where both the material and juridical possession are transferred, misappropriation of the property would constitute <i>estafa</i> .

Theft vis-à-vis Robbery

THEFT	ROBBERY
The offender does not use violence or intimidation or does not enter a house or building through any of the means specified in Articles 299 and 302.	The offender uses violence or intimidation or enters a house or building through any of the means specified in Articles 299 and 302.

QUALIFIED THEFT ART. 310

Qualified Theft (BAR 2007, 2010)

1. If theft is committed by a **domestic servant**;
2. If the theft is committed with **grave abuse of confidence**;

NOTE: If the offense is to be qualified by abuse of confidence, the abuse must be grave, like an accused who was offered food and allowed to sleep in the house of the complainant out of the latter's pity and charity, but stole the latter's money in his house when he left the place.

3. If the property stolen is a **motor vehicle, mail matter or large cattle**; (BAR 2002)

4. If the property stolen consist of **coconuts taken from the premises of a plantation**;
5. If the property stolen is **fish taken from a fishpond or fishery**; or
6. If property is **taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance**. (BAR 2006)

Q: Accused-appellant is a Branch Manager of UCC. It was alleged that he used the credit line of accredited dealers in favor of persons who either had no credit lines or had exhausted their credit lines. He diverted cement bags from the company's Norzagaray Plant or La Union Plant to truckers who would buy cement for profit. In these transactions, he instructed the customers that payments be made in the form of "Pay to Cash" checks, for which he did not issue any receipts. He did not remit the checks but these were either encashed or deposited to his personal bank account. What is the crime committed?

A: Qualified theft through grave abuse of confidence. His position entailed a high degree of confidence, having access to funds collected from UCC clients. As Branch Manager of UCC who was authorized to receive payments from UCC customers, he gravely abused the trust and confidence reposed upon him by the management of UCC. Precisely, by using that trust and confidence, accused-appellant was able to perpetrate the theft of UCC funds to the grave prejudice of the latter (*People v. Mirto, G.R. No. 193479, October 19, 2011*).

Q. Mrs. S was a bank teller. In need of money, she took P5,000.00 from her money drawer and made it appear that a certain depositor made a withdrawal from his account when in fact no such withdrawal was made. What crime was committed by Mrs. S?

A: Mrs. S is liable for qualified theft. Mrs. S was only in material possession of the deposits as she received the same in behalf of the bank. Juridical possession remains with the bank. Juridical possession means possession which gives the transferee a right over the thing which the transferee may set up even against the owner. If a bank teller appropriates the money for personal gain then the felony committed is theft. Further, since Mrs. S occupies a position of confidence, and the bank places money in her possession due to the confidence reposed on her, the felony of

qualified theft was committed (*Roque v. People G.R. No. 138954, November 25, 2004*).

Q: Clepto went alone to a high-end busy shop and decided to take one of the smaller purses without paying for it. Overcame by conscience, she decided to leave her own purse in place of the one she took. Her act was discovered and Clepto was charged with theft. She claimed that there was no theft, as the store suffered no injury or prejudice because she had left a purse in place of the one she took. Comment on her defense. (BAR 2014)

A: The defense of Clepto has no merit. Theft is already consummated from the moment Clepto took possession of one of the smaller purses inside a high-end shop, without paying for it. She took the personal property of another, with intent to gain, without the consent of the latter. Damage or injury to the owner is not an element of theft, hence, even if she left her purse in lieu of the purse she took, theft is still committed.

**THEFT OF THE PROPERTY OF THE NATIONAL LIBRARY AND NATIONAL MUSEUM
ART. 311**

Theft of property of National Library and National Museum has a fixed penalty regardless of its value, but if the crime is committed with grave abuse of confidence, the penalty for qualified theft shall be imposed.

USURPATION

**OCCUPATION OF REAL PROPERTY OR USURPATION OF REAL RIGHTS IN PROPERTY
ART. 312**

Punishable acts

1. Taking possession of any real property belonging to another; and
2. Usurping any real rights in property belonging to another.

Elements of occupation of real property or usurpation of real rights in property

1. Offender takes possession of any real property or usurps any real rights in property;
2. Real property or real rights belongs to another;

3. Violence against or intimidation of persons is used by the offender in occupying real property or usurping real rights in property; (**BAR 1996**) and
4. There is intent to gain.

If the accused is the owner of the property which he usurped from the possessor, he cannot be held liable for usurpation. Considering that this is a crime against property, there must be intent to gain. In the absence of the intent to gain, the act may constitute coercion.

No separate charge of homicide

If in the act of occupying a real property, somebody was killed, there can be no separate charge of homicide. If homicide was used in order to occupy the property, then homicide is absorbed. If a person was killed after the offender has already occupied the property, he is liable for a separate charge of homicide.

Acts punished by RA 947

Entering or occupying public agricultural land including public lands granted to private individuals.

Squatters

1. Those who have the capacity or means to pay rent or for legitimate housing but are squatting anyway.
2. Also the persons who were awarded lots but sold or lease them out.
3. Intruders of lands reserved for socialized housing, pre-empting possession by occupying the same (*Urban Development and Housing Act*).

There is only civil liability if there is no violence or intimidation in taking possession of real property.

Thus, if the accused took possession of the land of the offended party through other means, such as strategy or stealth, during the absence of the owner or of the person in charge of the property, there is only civil liability (*People v. Dimacutak, et al., C.A., 51 O.G. 1389*).

**ALTERING BOUNDARIES OR LANDMARKS
ART. 313**

Elements

1. There are boundary marks or monuments of towns, provinces, or estates, or any other

marks intended to designate the boundaries of the same; and

2. Offender alters said boundary marks.

Intent to gain is not necessary. The mere act of alteration or destruction of the boundary marks is sufficient.

**CULPABLE INSOLVENCY
FRAUDULENT INSOLVENCY
ART. 314**

Elements

1. Offender is a debtor, that is, he has obligations due and payable;
2. He absconds with his property; and
3. There be prejudice to his creditors.

The fraud must result to the actual prejudice of his creditors. If the accused concealed his property fraudulently but it turned out that he has some other property with which to satisfy his obligation, he is not liable under this article.

Essence of the crime

The essence of the crime is that any property of the debtor is made to disappear for the purpose of evading the fulfillment of the obligations and liabilities contracted with one or more creditors to the prejudice of the latter

Being a merchant qualifies the crime as the penalty is increased.

SWINDLING AND OTHER DECEITS

**SWINDLING (ESTAFA)
ART. 315
(BAR 1999, 2003, 2009, 2010, 2013)**

Elements of estafa in general

1. Accused defrauded another by abuse of confidence or by means of deceit – This covers the three different ways of committing *estafa* under Art. 315, thus:
 - a. With unfaithfulness or abuse of confidence;
 - b. By means of false pretenses or fraudulent acts; or
 - c. Through fraudulent means
2. Damage or prejudice capable of pecuniary estimation is caused to the offended party or third person.

- a. The failure of the entrustee to turn over the proceeds of the sale of the goods, documents, or instruments covered by a trust receipt, to the extent of the amount owing to the entruster, or as appearing in the trust receipt; or
- b. The failure to return said goods, documents, or instruments if they were not sold or disposed of in accordance with the terms of the trust receipt.

Elements of *estafa* with unfaithfulness or abuse of confidence under Art. 315 (1)

1. *Under paragraph (a):*
 - a. Offender has an onerous obligation to deliver something of value;
 - b. He alters its substance, quantity, or quality; and
 - c. Damage or prejudice is caused to another.

Illustration: Where the accused is bound by virtue of a contract of sale, payment having been received to deliver first class of rice (*e.g.* milagrosa) but delivered an inferior kind, or that he bound himself to deliver 1000 sacks but delivered less than 1000 because the other sacks were filled with different materials, he is guilty of *estafa* with unfaithfulness or abuse of confidence by altering the quantity or quality of anything of value by virtue of an obligation to do so.

2. *Under paragraph (b):*
 - a. Money, goods, or other personal property is received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same;
 - b. There is misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt;
 - c. Such misappropriation or conversion or denial is to the prejudice of another; and
 - d. There is a demand made by the offended party to the offender.

NOTE: The fourth element is not necessary when there is evidence of misappropriation of the goods by the defendant.

Illustration: The accused received in trust the money from the complainants for the particular purpose of investing the same with the Philtrust Investment Corp. with the obligation to make delivery thereof upon

demand but failed to return the same despite demands. It was admitted that she used the money for her business. Accused is guilty of *estafa* through misappropriation (*Fontanilla v. People*, G.R. No. 120949, July 5, 1996). (BAR 2015)

A money market transaction however partakes of the nature of a loan, and non-payment thereof would not give rise to criminal liability for *estafa* through misappropriation or conversion. In money market placements, the unpaid investor should institute against the middleman or dealer, before the ordinary courts, a simple action for recovery of the amount he had invested, and if there is allegation of fraud, the proper forum would be the SEC (*Sesbreno v. CA*, G.R. No. 84096, January 26, 1995).

3. *Under paragraph (c):*
 - a. The paper with the signature of the offended party is in blank;
 - b. Offended party delivered it to the offender;
 - c. Above the signature of the offended party, a document is written by the offender without authority to do so; and
 - d. The document so written creates a liability of, or causes damage to, the offended party or any third person.

Q: Is the accused's mere failure to turn over the thing delivered to him in trust despite demand and the duty to do so, constitute *estafa* under Art. 315 par 1 (b)?

A: NO. The essence of *estafa* under Art. 315 (1) (b) of the RPC is the appropriation or conversion of money or property received, to the prejudice of the owner thereof. It takes place when a person actually appropriates the property of another for his own benefit, use and enjoyment. The failure to account, upon demand, for funds or property held in trust is a mere circumstantial evidence of misappropriation. In other words, the demand for the return of the thing delivered in trust and the failure of the accused to account for it are circumstantial evidence of misappropriation. However, this presumption is rebuttable. If the accused is able to satisfactorily explain his failure to produce the thing delivered in trust, he may not be held liable for *estafa*. In the case at bar, however, since the medical representative failed to explain his inability to produce the thing delivered to him in trust, the rule that "the failure to account, upon demand, for funds or property held in trust is circumstantial evidence of

misappropriation" applies without doubt (*Filadams Pharma, Inc. v. CA*, G.R. No. 132422, March 30, 2004).

Q: Petitioner posits that the CA erred in affirming the said RTC Decision and in modifying the penalty imposed upon him since the prosecution failed to establish beyond reasonable doubt all the elements of *estafa*. He argues that Article 315, paragraph 1(b) of the RPC requires that the person charged was given juridical possession of the thing misappropriated. Here, he did not acquire juridical possession of the things allegedly misappropriated because his relation to SPIs properties was only by virtue of his official functions as a corporate officer. It is actually SPI, on whose behalf he has acted, that has the juridical possession of the said properties. Is the petitioner correct?

A: No. Misappropriation or conversion may be proved by the prosecution by direct evidence or by circumstantial evidence. The failure to account upon demand, for funds or property held in trust, is circumstantial evidence of misappropriation. As mentioned, petitioner failed to account for, upon demand, the properties of SPI which were received by him in trust. This already constitutes circumstantial evidence of misappropriation or conversion of said properties to petitioners own personal use. (ANDRE L. D'AIGLE VS PEOPLE, Gr. No. 132422, June 27, 2012)

Q: Aurelia introduced Rosa to Victoria, a dealer in jewelry. Rosa agreed to sell a diamond ring and bracelet for Victoria on a commission basis, on condition that, if these items cannot be sold, they may be returned to Victoria forthwith. Unable to sell the ring and bracelet, Rosa delivered both items to Aurelia with the understanding that Aurelia shall, in turn, return the items to Victoria. Aurelia dutifully returned the bracelet to Victoria but sold the ring, kept the cash proceeds thereof to herself, and issued a check to Victoria which bounced. Victoria sued Rosa for *estafa* under Art. 315 of the RPC, insisting that delivery to a third person of the thing held in trust is not a defense in *estafa*. Is Rosa criminally liable for *estafa* under the circumstances? (BAR 1999)

A: NO, Rosa cannot be held criminally liable for *estafa*. Although she received the jewelry from Victoria under an obligation to return the same or deliver the proceeds thereof, she did not misappropriate it. In fact, she gave them to Aurelia specifically to be returned to Victoria. The

misappropriation was done by Aurelia, and absent the showing of any conspiracy between Aurelia and Rosa, the latter cannot be held criminally liable for Aurelia's acts.

Elements of *estafa* by means of false pretenses or fraudulent acts under Article 315 (2)

1. *Under paragraph (a) –*
 - a. Using fictitious name;
 - b. Falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or
 - c. By means of other similar deceptions.
2. *Under paragraph (b) –* Altering the quality, fineness, or weight of anything pertaining to his art or business.
3. *Under paragraph (c) –* Pretending to have bribed any government employee, without prejudice to the action for calumny which the offended party may deem proper to bring against the offender. **(BAR 2014)**
4. *Under paragraph (d) –* postdating a check or issuing a check in payment of an obligation. **(BAR 2014)**
5. *Under paragraph (e) –*
 - a. By obtaining food, refreshment or accommodation at a hotel, inn, restaurant, boarding house, lodging house or apartment house without paying therefor, with intent to defraud the proprietor or the manager thereof;
 - b. By obtaining credit at any of said establishments by the use of any false pretense; or
 - c. By abandoning or surreptitiously removing any part of his baggage from any of said establishments after obtaining credit, food, refreshment or accommodation therein, without paying therefor.

Elements of *estafa* under par. 2 (d) of Art. 315

1. The postdating or issuance of a check in payment of an obligation contracted at the time the check was issued;
2. Lack of sufficiency of funds to cover the check; and
3. Damage to the payee (*People v. Montaner, G.R. No. 184053, August 31, 2011*).

Application of Article 315 (2) (d)

Article 315 (2) (d) applies when:

1. Check is drawn to enter into an obligation
2. Obligation is not pre-existing

NOTE: The check must be genuine. If the check is falsified and is encashed with the bank or exchanged for cash, the crime is *estafa* thru falsification of a commercial document.

Illustration: The accused must be able to obtain something from the offended party by means of the check he issued and delivered. Thus, if A issued a check in favor of B for a debt he has incurred a month or so ago, the dishonor of the check for insufficiency of funds in the bank does not constitute *Estafa*. But if A told B to deliver to him P10,000 and he would issue in favor of B a check in the sum of P11,000 as it was a Sunday and A needed the cash urgently, and B gave his P10,000 having in mind the profit of P1,000 when he encashed the check on Monday and the check bounced when deposited, A can be held liable for *Estafa*. In such case, it was clear that B would have not parted with his P10,000 were it not for the issuance of A's check.

Good faith as a defense

The payee's knowledge that the drawer has no sufficient funds to cover the postdated checks at the time of their issuance negates *estafa*.

Effect of failure to comply with a demand to settle the obligation

The effect of failure to comply with a demand to settle the obligation will give rise to a *prima facie* evidence of deceit, which is an element of the crime of *estafa*, constituting false pretense or fraudulent act as stated in the second sentence of paragraph 2(d), Article 315 of the RPC (*People v. Montaner, ibid.*).

Q: Can the fact that the accused was not the actual maker of the check be put up as a defense?

A: NO. In the case of *People v. Isleta, et.al.* and reiterated in the case of *Zalgado v. CA* it was held that the appellant who only negotiated directly and personally the check drawn by another is guilty of *estafa* because he had "guilty knowledge that at the time he negotiated the check, the drawer has no sufficient funds." (*Garcia v. People, G.R. No. 144785, September 11, 2003*).



Elements of *Estafa* through fraudulent means under Article 315 (3)

1. *Under paragraph (a) –*
 - a. Offender induced the offended party to sign a document.
 - b. Deceit was employed to make him sign the document.
 - c. Offended party personally signed the document.
 - d. Prejudice was caused.

Illustration: A induced an illiterate owner who was desirous of mortgaging his property for a certain amount, to sign a document which he believed was only a power of attorney but in truth it was a deed of sale. A is guilty of *Estafa* under par. 3(a) and the damage could consist at least in the disturbance in property rights (*U.S. v. Malong, GR. No. L-12597, August 30, 1917*).

2. *Under paragraph (b) –* Resorting to some fraudulent practice to insure success in a gambling game;
3. *Under paragraph (c) –*
 - a. Offender removed, concealed or destroyed.
 - b. Any court record, office files, documents or any other papers.
 - c. With intent to defraud another.

Illustration: When a lawyer, pretending to verify a certain pleading in a case pending before a court, borrows the folder of the case, and removes or destroys a document which constitutes evidence in the said case, said lawyer is guilty of *estafa* under par. 3(c).

Q: What does fraud and deceit in the crime of *estafa* mean?

A: In *Alcantara v. CA*, the Court, citing *People v. Balasa*, explained the meaning of fraud and deceit, viz.:

Fraud in its general sense is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another. It is a generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one

individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated.

Deceit is the false representation of a matter of fact whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury (*Lateo y Eleazar v. People, G.R. No. 161651, June 8, 2011*).

Demand as a condition precedent to the existence of *estafa*

GR: There must be a formal demand on the offender to comply with his obligation before he can be charged with *estafa*.

XPN:

1. When the offender's obligation to comply is subject to a period, and
2. When the accused cannot be located despite due diligence.

Novation theory

Novation theory contemplates a situation wherein the victim's acceptance of payment converted the offender's criminal liability to a civil obligation. It applies only if there is a contractual relationship between the accused and the complainant.

Effect of novation or compromise to the criminal liability of a person accused of *estafa*

Novation or compromise does not affect the criminal liability of the offender. So, partial payment or extension of time to pay the amount misappropriated or acceptance of a promissory note for payment of the amount involved does not extinguish criminal liability, because a criminal offense is committed against the people and the offended party may not waive or extinguish the criminal liability that the law imposes for the commission of the offense. In order that novation of contract may relieve the accused of criminal liability, the novation must take place before the criminal liability is incurred; criminal liability for *estafa* is not affected by compromise or novation of contract for it is a public offense which must be prosecuted and punished by the State at its own volition.

Q: Respondents were authorized to extend credit accommodation to clients up to

P200,000. However, petitioner's client, Universal Converter Philippines, Inc. (Universal), was able to make withdrawals totaling P81,652,000 against uncleared regional checks deposited in its account at petitioner's Port Area branch. Such withdrawals were without prior approval of petitioner's head office. Subsequently, petitioner and Universal entered into a Debt Settlement Agreement whereby the latter acknowledged its indebtedness to the former in the total amount of P50,990,976.27.

A: Novation is not a mode of extinguishing criminal liability for estafa. The criminal liability therefor is not affected by a compromise or novation of contract. Reimbursement or belated payment to the offended party of the money swindled by the accused does not extinguish the criminal liability of the latter. (METROPOLITAN BANK AND TRUST COMPANY v. ROGELIO REYNADO AND JOSE C. ADRANDEA, **GR. No. 164538** August 9, 2010)

Payment of an obligation before the institution of the complaint

Payment of an obligation before the institution of the complaint does not relieve the offender from liability. Mere payment of an obligation before the institution of a criminal complaint does not, on its own, constitute novation that may prevent criminal liability. The criminal liability for *estafa* already committed is not affected by the subsequent novation of contract, for it is a public offense which must be prosecuted and punished by the State (*Milla v. People*, G.R. No. 188726, January 25, 2012).

Distinctions between Robbery, Theft, and Estafa

ROBBERY	THEFT	ESTAFA
Only personal property is involved.	Only personal property is involved.	Subject matter may be real property.
Taking is by means of force upon things or violence against or intimidation of persons.	Taking is not by means of force upon things or violence against or intimidation of persons.	Taking is not by means of force upon things or violence against or intimidation of persons.

Penalty does not necessarily depend on the amount involved.	Penalty depends on the amount involved.	Penalty depends on the amount involved.
Offender takes the property without the consent of the owner by using threats, intimidation or violence.	Offender takes the property without the consent of the owner and <i>without</i> using threats, intimidation or violence.	Offender receives the property.

NOTE: The crime is theft even if the property was delivered to the offender by the owner or possessor, if the latter expects an immediate return of the property delivered, that is, he delivered only the **physical or material possession** of the property (*U.S. v. De Vera*, G.R. No. 16961, September 19, 1921). However, if what was delivered was **juridical possession** of the property, that is, a situation where the person to whom it was delivered can set off his right to possess even as against the owner, and the latter should not be expecting the immediate return of the property, the misappropriation or taking of that property is *estafa* (*U.S. v. Figueroa*, G.R. No. 6748, March 16, 1912).

Q: A, intending to redeem certain jewels gave the pawnshop tickets to B, her servant so that the latter might take care of them temporarily. One week later, B met C, who got the tickets and refused to return them alleging that the tickets were of no value notwithstanding the demands made by B. Later, C redeemed the jewels without the knowledge and consent of A or B. What crime did C commit?

A: The complex crime of theft and *estafa*, because the former is a necessary means to commit the latter. C, with intent to gain, took the pawnshop tickets without the consent of either A or B. This is theft. By redeeming the jewels by means of the pawnshop tickets, he committed *estafa* using a fictitious name (*People v. Yusay*, G.R. No.L-26957, September 2, 1927).

Estafa with abuse of confidence vis-à-vis Malversation

ESTAFA WITH ABUSE OF CONFIDENCE	MALVERSION
Funds or property are always private.	Involves public funds or property.
Offender is a private individual or even a public officer who is not accountable for public funds or property.	Offender is usually a public officer is accountable for public funds or property.
Crime is committed by misappropriating, converting or denying having received money, goods or other personal property.	Crime is committed by appropriating, taking or misappropriating or consenting, or, through abandonment or negligence, permitting any other person to take the public funds or property.
Offenders are entrusted with funds or property.	
Continuing offenses.	

Estafa through false pretense made in writing is only a simple crime of *estafa*, not a complex crime of *estafa* through falsification.

Estafa vis-à-vis Infidelity in the custody of document

ESTAFA	INFIDELITY IN THE CUSTODY OF DOCUMENTS
Private individual was entrusted with the document.	Public officer entrusted with the document.
Intent to defraud.	No intent to defraud.

Separate charges of estafa and illegal recruitment

It is settled that a person may be charged and convicted separately of illegal recruitment under Republic Act No. 8042, in relation to the Labor Code, and *estafa* under Article 315, paragraph 2(a) of the Revised Penal Code. We explicated in *People v. Cortez and Yabut* that: In this jurisdiction, it is settled that the offense of illegal

recruitment is *malum prohibitum* where the criminal intent of the accused is not necessary for conviction, while *estafa* is *malum in se* where the criminal intent of the accused is crucial for conviction. Conviction for offenses under the Labor Code does not bar conviction for offenses punishable by other laws. Conversely, conviction for *estafa* under par. 2(a) of Art. 315 of the Revised Penal Code does not bar a conviction for illegal recruitment under the Labor Code. It follows that one's acquittal of the crime of *estafa* will not necessarily result in his acquittal of the crime of illegal recruitment in large scale, and *vice versa* (*People v. Ochoa, G.R. No. 173792, August 31, 2011*). **(BAR 2015)**

Q: In providing the penalty, may the Court validly provide penalties for crimes against property based on the current inflation rate computing from the time the case was filed?

A: NO. There seems to be a perceived injustice brought about by the range of penalties that the courts continue to impose on crimes against property committed today, based on the amount of damage measured by the value of money eighty years ago in 1932. However, this Court cannot modify the said range of penalties because that would constitute judicial legislation.

Verily, the primordial duty of the Court is merely to apply the law in such a way that it shall not usurp legislative powers by judicial legislation and that in the course of such application or construction, it should not make or supervise legislation, or under the guise of interpretation, modify, revise, amend, distort, remodel, or rewrite the law, or give the law a construction which is repugnant to its terms (*Corpuz v. People, G.R. No. 180016, April 29, 2014*).

**OTHER FORMS OF SWINDLING
ART. 316**

Other forms of swindling

1. Conveying, selling, encumbering, or mortgaging any real property, pretending to be the owner of the same.

Elements:

- a. Thing be immovable;
- b. Offender who is not the owner of said property should represent that he is the owner thereof;
- c. Offender should have executed an act of ownership (*selling, leasing, encumbering or*

- mortgaging the real property*); and
- d. Act is made to the prejudice of the owner or of a third person.

NOTE: There must be existing real property in order to be liable under this Article. If the real property is inexistent, the offender will be liable for *estafa* under par. 2(a).

2. Disposing real property knowing it to be encumbered even if the encumbrance be not recorded. **(BAR 1998)**

Elements:

- a. That the thing disposed of is real property;

NOTE: If the thing encumbered is a *personal property*, it is Art. 319 (selling or pledging personal property) which governs and not this Article.

- b. Offender knew that the real property was encumbered, whether the encumbrance is recorded or not;

NOTE: Encumbrance includes every right or interest in the land which exists in favor of third persons

- c. There must be express representation by the offender that the real property is free from encumbrance; and
- d. Act of disposing of the real property be made to the damage of another.

NOTE: If the loan had already been granted before the property was offered as a security, Art. 316 (2) is not violated.

3. Wrongful taking of personal property from its lawful possessor to the prejudice of the latter or a third person;

Elements:

- a. Offender is the owner of personal property;
 - b. Said personal property is in the lawful possession of another;
 - c. Offender wrongfully takes it from its lawful possessor; and
 - d. Prejudice is thereby caused to the possessor or third person.
4. Executing any fictitious contract to the prejudice of another.

5. Accepting any compensation given to him under the belief it was in payment of services or labor when he did not actually perform such services or labor.

NOTE: This Article requires fraud as an important element. If there is no fraud, it becomes payment not owing, known as *solutio indebiti* under the Civil Code with the civil obligation to return the wrong payment. (Reyes, 2008)

It would seem that what constitutes *estafa* under this paragraph is the malicious failure to return the compensation wrongfully received. (Reyes, 2008)

6. Selling, mortgaging or in any manner encumbering real property while being a
7. surety in bond without express authority from the court or before being relieved from the obligation.

Elements:

- a. Offender is a surety in a bond given in a criminal or civil action;
- b. He guaranteed the fulfillment of such obligation with his real property or properties;
- c. He sells, mortgages, or, in any other manner encumbers said real property; and
- d. Such sale, mortgage or encumbrance is without express authority from the court, or made before the cancellation of his bond, or before being relieved from the obligation contracted by him.

NOTE: Art. 316 contemplates the existence of actual damage as an element of the offense. Mere intent to cause damage is not sufficient.

Art. 316 (1) vis-à-vis Art. 315 par. 2 (a)

ART. 316 (1)	ART. 315 PAR.2 (A)
Refers only to real property.	Covers real and personal property.
The offender exercises or executes, as part of the false representation, some act of dominion or ownership over the property to the damage and prejudice of the real owner of the thing.	It is broader because it can be committed even if the offender does not execute acts of ownership, as long as there was a false pretense.



**SWINDLING A MINOR
ART. 317**

Elements

1. Offender takes advantage of the inexperience or emotions or feelings of a minor;
2. He induces such minor to assume an obligation, or to give release, or to execute a transfer of any property right;

NOTE: Real property is not included because it cannot be made to disappear, since a minor cannot convey real property without judicial authority.

3. Consideration is some loan of money, credit or other personal property; and
4. Transaction is to the detriment of such minor.

Actual proof of deceit or misrepresentation, not necessary

It is not essential that there is actual proof of deceit or misrepresentation. It is sufficient that the offender takes advantage of the inexperience or emotions of the minor.

**OTHER DECEITS
ART. 318**

Other kinds of deceit under Art. 318 (BAR 2000)

1. Defrauding or damaging another by any other deceit not mentioned in the preceding articles; and
2. Interpreting dreams, making forecasts, telling fortunes, or taking advantage of the credulity of the public in any other similar manner, for profit or gain.

Deceits in this article include *false pretenses* and *fraudulent acts*.

CHATTEL MORTGAGE

**REMOVAL, SALE OR PLEDGE OF
MORTGAGED PROPERTY
ART. 319**

Punishable acts

1. Knowingly removing any personal property mortgaged under the Chattel Mortgage Law to any province or city other than the one in

which it was located at the time of execution of the mortgage, without the written consent of the mortgagee or his executors, administrators or assigns.

Elements:

- a. Personal property is mortgaged under the Chattel Mortgage Law;
- b. Offender knows that such property is so mortgaged;
- c. Offender removes such mortgaged personal property to any province or city other than the one in which it was located at the time of the execution of the mortgage;
- d. Removal is permanent; and
- e. There is no written consent of the mortgagee or his executors, administrators or assigns to such removal.

NOTE: Any person can be the offender.

2. Selling or pledging personal property already pledged, or any part thereof, under the terms of the Chattel Mortgage Law, without the consent of the mortgagee written on the back of the mortgage and noted on the record thereof in the office of the register of deeds of the province where such property is located.

Elements:

- a. Personal property is already pledged under the terms of the Chattel Mortgage Law;
- b. Offender, who is the mortgagor of such property, sells or pledges the same or any part thereof; and
- c. There is no consent of the mortgagee written on the back of the mortgage and noted on the record thereof in the office of the register of deeds.

Chattel mortgage must be valid and subsisting. Removal of the mortgaged personal property must be coupled with intent to defraud.

Chattel mortgage vis-à-vis Estafa under Art. 316

BASIS	CHATTEL MORTGAGE	ESTAFA UNDER ARTICLE 316
<i>As to property involved</i>	The property involved is	The property involved is a

	personal property.	real property.
As to commission	Selling or pledging of personal property already pledged or mortgaged is committed by the mere failure to obtain the consent of the mortgagee in writing even if the offender should inform the purchaser that the thing sold is mortgaged.	To constitute <i>estafa</i> , it is sufficient that the real property mortgaged be sold as free, even though the vendor may have obtained the consent of the mortgagee in writing.
As to purpose	The purpose of the law is to protect the mortgagee.	The purpose is to protect the purchaser, whether the first or the second.

**DESTRUCTIVE ARSON
ART. 320, AS AMENDED BY RA 7659**

NOTE: The laws on arson in force today are PD 1613 (Simple Arson) and Art. 320, as amended by RA 7659 (Destructive Arson) (Reyes, 2017).

Commission of destructive Arson

1. Any person who shall burn: **(BAR 2000)**
 - a. One or more buildings or edifices, consequent to one single act of burning, or as a result of simultaneous burnings, or committed on several or different occasions;
 - b. Any building of public or private ownership, devoted to the public in general or where people usually gather or congregate for a definite purpose such as, but not limited to official governmental function or business, private transaction, commerce, trade workshop, meetings and conferences or merely incidental to a definite purpose such as but not limited to hotels, motels, transient dwellings, public conveyance or stops or terminals, regardless of whether the offender had knowledge that there are persons in said

building or edifice at the time it is set on fire

and regardless also of whether the building is actually inhabited or not; **(BAR 1994)**

- c. Any train or locomotive, ship or vessel, airship or airplane, devoted to transportation or conveyance, or for public use, entertainment or leisure;
 - d. Any building, factory, warehouse installation and any appurtenances thereto, which are devoted to the service of public utilities; or
 - e. Any building the burning of which is for the purpose of concealing or destroying evidence of another violation of law, or for the purpose of concealing bankruptcy or defrauding creditors or to collect from insurance. **(BAR 1995)**
2. Two or more persons or by a group of persons, regardless of whether their purpose is merely to burn or destroy the building or the burning merely constitutes an overt act in the commission of another violation of law.
 3. Any person who shall burn:
 - a. Any arsenal, shipyard, storehouse or military powder or fireworks factory, ordinance, storehouse, archives or general museum of the Government.
 - b. In an inhabited place, any storehouse or factory of inflammable or explosive materials.

If there was intent to kill, the crime committed is not arson but murder by means of fire.

Destructive Arson vis-à-vis Simple Arson under PD No. 1613

The nature of Destructive Arson is distinguished from Simple Arson by the degree of perversity or viciousness of the criminal offender.

Special Aggravating Circumstances in Arson:

1. If committed with intent to gain;
2. If committed for the benefit of another;
3. If the offender be motivated by spite or hatred towards the owner; or
4. If committed by a syndicate.

NOTE: The slightest discoloration of a part of a building is **consummated arson**. But when a person who intends to burn a structure by collecting and placing rags soaked in a gasoline and placed them near the wall of the building but who was discovered as he was about to set fire to the rags is liable for **attempted arson**

MALICIOUS MISCHIEF

**MALICIOUS MISCHIEF
ART. 327**

Malicious mischief

Malicious mischief is the willful damaging of another's property by any act not constituting arson or crimes of destruction due to hate, revenge or mere pleasure of destroying.

Elements

1. Offender deliberately caused damage to the property of another;
2. Such act does not constitute arson or other crimes involving destruction; and
3. Act of damaging another's property be committed merely for the sake of damaging it.

Q: There was a collision between the side view mirrors of two (2) vehicles. Immediately thereafter, the wife and the daughter of A alighted from the CRV and confronted B. A, in view of the hostile attitude of B, summoned his wife and daughter to enter the CRV and while they were in the process of doing so, B moved and accelerated his Vitara backward as if to hit them. Was there malicious mischief?

A: YES. The hitting of the back portion of the CRV by B was clearly deliberate. The act of damaging the rear bumper of the CRV does not constitute arson or other crimes involving destruction. When the Vitara bumped the CRV, B was venting out his anger and hate as a result of a heated encounter between him and A (*Taguinod v. People, G.R. No.185833, October 12, 2011*).

Q: Mario was hired by the PNB as caretaker of its lot situated in Balanga, Bataan. Consequently, Mario put up on the said lot a sign which reads "No Trespassing, PNB Property" to ward off squatters. Despite the sign, Julita, believing that the said lot was owned by her grandparents, constructed a nipa hut thereon. Hence, Mario, together with four others, tore down and demolished Julita's hut. She thus filed with the MTC a criminal complaint for malicious mischief. Mario admitted that he deliberately demolished Julita's nipa hut but he, however, contends that the third element of the crime of malicious mischief, i.e., that the act of damaging another's property be committed merely for the sake of damaging it, is not present in this

case. He maintains that the demolition of the nipa hut is for the purpose of safeguarding the interest of his employer. Was the court correct in convicting Mario of malicious mischief?

A: YES, Mario's conviction for malicious mischief must be sustained. As to the third element, Mario was not justified in summarily and extra-judicially demolishing Julita's nipa hut. As it is, Mario proceeded, not so much to safeguard the lot, as it is to vent out his anger and express his disgust over the "no trespassing" sign he placed thereon. Indeed, his act of summarily demolishing the house smacks of his pleasure in causing damage to it (*Valeroso v. People, G.R. No. 149718. September 29, 2003*).

**SPECIAL CASES OF MALICIOUS MISCHIEF OR
QUALIFIED MALICIOUS MISCHIEF
ART. 328**

Punishable acts under this article

1. Causing damage to obstruct the performance of public functions;
2. Using any poisonous or corrosive substance;
3. Spreading any infections among cattle; and
4. Causing damage to the property of the National Museum or National Library, or to any archive or registry, waterworks, road, promenade, or any other thing used in common by the public.

NOTE: The cases of malicious mischief under this article is also called qualified malicious mischief.

**OTHER MISCHIEFS
ART. 329**

Q: The cows of B caused destruction to the plants of A. As an act of revenge, A and his tenants killed said cows. What is the crime committed?

A: The crime committed out of hate and revenge, is that of malicious mischief penalized by Art. 329.

**DAMAGE OR OBSTRUCTION TO MEANS OF
COMMUNICATION
ART. 330**

How this crime is committed

It is committed by damaging any railway, telegraph or telephone lines.

Qualification of the crime

This crime would be qualified if the damage results in any derailment of cars, collision, or other accident.

DESTROYING OR DAMAGING STATUES, PUBLIC MONUMENTS OR PAINTINGS ART. 331

Persons liable for this crime

1. Any person who shall destroy or damage statues or any other useful or ornamental public monuments
2. Any person who shall destroy or damage any useful or ornamental painting of a public nature.

PERSONS EXEMPT FROM CRIMINAL LIABILITY IN CRIMES AGAINST PROPERTY ART. 332

Crimes involved in this Article

1. Theft;
2. Swindling (*estafa*); and
3. Malicious mischief.

If any of the crimes is complexed with another crime, such as Estafa thru Falsification, Art. 332 is not applicable.

Persons exempted under Art. 332 (BAR 2000, 2008)

1. Spouses, ascendants and descendants, or relatives by affinity in the same line;
2. The widowed spouse with respect to the property which belonged to the deceased spouse before the same passed into the possession of another; and
3. Brothers and sisters and brothers-in-law and sisters-in-law, if living together.

NOTE: The exemption does not apply to strangers participating in the commission of the offense.

Reason for exemption

The law recognizes the *presumed* co-ownership of the property between the offender and the offended party.

Persons also included in the enumeration

The stepfather, adopted children, natural children, concubine, and paramour.



CRIMES AGAINST CHASTITY

NOTE: Rape is no longer a crime against chastity. It has been re-classified under RA 8353 as a crime against person.

Crimes which are considered as private crimes

The crimes of adultery, concubinage, seduction, abduction and acts of lasciviousness are the so-called private crimes. They cannot be prosecuted except upon the complaint initiated by the offended party.

The law regards the privacy of the offended party here as more important than the disturbance to the order of society. The law gives the offended party the preference whether to sue or not to sue.

But the moment the offended party has initiated the criminal complaint, the public prosecutor will take over and continue with prosecution of the offender. This is so because when the prosecution starts, the crime already becomes public and it is beyond the offended party to pardon the offender.

**ADULTERY
ART. 333**

Elements (BAR 2002, 2008, 2015)

1. To convict a woman for adultery, it is necessary:
 - a. That she is a married woman; and
 - b. That she unites in sexual intercourse with a man not her husband.
2. To convict a man for adultery, it is necessary:
 - a. That he had actual intercourse with a married woman; and
 - b. That he commits the act with the knowledge that said woman is married.

A single intercourse consummates the crime of adultery. Each sexual intercourse constitutes a crime of adultery, even if it involves the same man. The sexual intercourse need not to be proved by direct evidence. Circumstantial evidence like seeing the married woman and her paramour in scanty dress, sleeping together, alone in a house, would suffice.

Q: Is the acquittal of one of the defendants operates as a cause of acquittal of the other?

A: NO, because of the following reasons:

1. There may not be a joint criminal intent, although there is joint physical act. One of the parties may be insane and the other sane, in which case, only the sane could be held liable criminally.
2. The man may not know that the woman is married, in which case, the man is innocent.
3. Death of the woman during the pendency of the action cannot defeat the trial and conviction of the man.
4. Even if the man had left the country and could not be apprehended, the woman can be tried and convicted.

Adultery vis-à-vis Prostitution

ADULTERY	PROSTITUTION
It is a private offense.	It is a crime against public morals.
Committed by a married woman who shall have sexual intercourse with a man not her husband.	Committed by a woman whether married or not, who for money or profit, habitually indulges in sexual intercourse or lascivious conduct.

**CONCUBINAGE
ART. 334**

Punishable acts under concubinage

1. Keeping a mistress in the conjugal dwelling.
2. Having sexual intercourse, under scandalous circumstances, with a woman who is not his wife.
3. Cohabiting with her in any other place.

Unlike in adultery where a single sexual intercourse may constitute such a crime, in concubinage, a married man is liable only when he had sexual intercourse under scandalous circumstances.

Elements (BAR 1994, 2002, 2010)

1. Man must be married;
2. He committed any of the following acts:
 - a. Keeping a mistress in the conjugal dwelling;

Illustration: If the charges consist in keeping a mistress in the conjugal dwelling, there is no need of proof of sexual intercourse. The conjugal dwelling is the house of the spouses even if the wife happens to be temporarily absent



therefrom. The woman however must be brought to the conjugal house by the accused as concubine to fall under this article. Thus, if the co-accused was voluntarily taken and sheltered by the spouses in their house, and treated as an adopted child being a relative of the complaining wife, her illicit relations with the accused husband does not make her a mistress.

- b. Having sexual intercourse, under scandalous circumstances, with a woman who is not his wife; or

Illustration: For the crime of concubinage by having sexual intercourse under a scandalous manner to exist, it must be done imprudently and wantonly as to offend modesty and sense of morality and decency. Thus, where the accused and his mistress lived in the same room of a house, comported themselves as husband and wife publicly and privately, giving the impression to everybody that they were married, and performed acts in sight of the community which gave rise to criticism and general protest among neighbours, they committed concubinage.

- c. Cohabiting with her in any other place.

Illustration: If the charge is cohabiting with a woman not his wife in any other place, proof of actual sexual intercourse may not be necessary too. But the term "cohabit" means intercourse together as husband or wife or living together as husband and wife. The cohabitation must be for some period of time which may be a week, a year or longer as distinguished from occasional or transient meetings for unlawful sexual intercourse.

3. As regards the woman, she must know him to be married.

Parties included in the complaint

The complaint must include both parties if they are both alive. In case of pardon or when the offended spouse consented, the same shall bar the prosecution of the offenses, provided it be done

before the institution or filing of the criminal complaint.

Q: May a husband be liable for concubinage and adultery at the same time for the same act of illicit intercourse with the wife of another man?

A: YES, when the husband commits concubinage with a married woman and provided that the two offended parties, i.e., his wife and the husband of his mistress file separate cases against him.

ACTS OF LASCIVIOUSNESS

Kinds of acts of lasciviousness

1. Under Art. 336 (Acts of lasciviousness)
2. Under Art. 339 (Acts of lasciviousness with the consent of the offended party)

ACTS OF LASCIVIOUSNESS ART. 336

Elements

1. Offender commits any act of lasciviousness or lewdness;
2. Act of lasciviousness is committed against a person of either sex; and
3. It is done under any of the following circumstances:
 - a. By using force or intimidation;
 - b. When the offended party is deprived of reason or otherwise unconscious;
 - c. By means of fraudulent machination or grave abuse of authority; or
 - d. When the offended party is under 12 years of age or is demented.

Under Art. 336, acts of lasciviousness is committed when the act performed with lewd design was perpetrated under circumstances which would have brought about the crime of rape if sexual intercourse was effected. Where circumstances however are indicative of a clear intention to lie with the offended party, the crime committed is Attempted Rape.

Illustration: When the accused not only kissed and embraced the complainant but also fondled her breast with particular design to independently derive vicarious pleasure therefrom, the element of lewd design exists.

If lewd design cannot be proven as where the accused merely kissed and embraced the complainant either out of passion or other motive, touching her breast as a mere incident, the act would be categorized as



unjust vexation (*People v. Climaco*, 46 O.G. 3186).

Offended party under this article

The offended party may be a man or a woman:

1. Under 12 years of age; or
2. Being over 12 years of age, the lascivious acts were committed on him or her through violence or intimidation, or while the offender party was deprived of reason, or otherwise unconscious.

Requirement in order to sustain conviction for acts of lasciviousness

It is essential that the acts complained of be prompted by lust or lewd designs and that the victim did not consent or encourage such acts.

Intent to rape as an element of the crime

Intent to rape is NOT a necessary element of the crime of acts of lasciviousness; otherwise, the crime would be attempted rape.

NOTE: There can be no frustration of acts of lasciviousness, rape or adultery. From the moment the offender performs all elements necessary for the existence of the felony, he actually attains his purpose and, from that moment, all the essential elements of the offense have been accomplished.

Acts of lasciviousness vis-à-vis Attempted rape

ACTS OF LASCIVIOUSNESS	ATTEMPTED RAPE
Purpose is only to commit acts of lewdness.	Purpose is to lie with the offended woman.
Lascivious acts are themselves the final objective sought by the offender.	Lascivious acts are but the preparatory acts to the commission of rape.

Illustration: When the accused lifted the dress of the offended party, and placed himself on top of her but the woman awoke and screamed for help and despite that, the accused persisted in his purpose, tearing the drawers, kissing and fondling her breasts, the crime is not only acts of lasciviousness but that of attempted rape.

NOTE: Mere words can constitute sexual harassment unlike in acts of lasciviousness, where there must be overt acts.

Punishable acts under the Anti-Sexual Harassment Act (RA 7877)

1. In a **work-related or employment environment**, sexual harassment is committed when:
 - a. The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting said individual favorable compensation, terms, conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in a way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee
 - b. The above acts would impair the employee's rights or privileges under existing labor laws; or
 - c. The above acts would result in an intimidating, hostile, or offensive environment for the employee.
2. In an **educational or training environment**, sexual harassment is committed:
 - a. Against one who is under the care, custody or supervision of the offender
 - b. Against one whose education, training, apprenticeship or tutorship is entrusted to the offender
 - c. When the sexual favor is made a condition to the giving of a passing grade, or the granting of honors and scholarships, or the payment of a stipend, allowance or other benefits, privileges, or considerations; or
 - d. When the sexual advances result in an intimidating, hostile or offensive environment for the student, trainee or apprentice.

NOTE: Any person who directs or induces another to commit any act of sexual harassment as herein defined, or who cooperates in the commission thereof by another without which it would not have been committed, shall also be held liable under this Act (*Sec. 3*).

Q: Will administrative sanctions bar prosecution of the offense?

A: NO, it shall not be a bar to prosecution in proper courts for unlawful acts of sexual harassment.

SEDUCTION, CORRUPTION OF MINORS AND WHITE SLAVE TRADE

Commission of seduction

Seduction is committed by enticing a woman to **unlawful sexual intercourse** by promise of marriage or other means of persuasion without use of force.

QUALIFIED SEDUCTION ART. 337

Acts that constitute qualified seduction

1. Seduction of a virgin over 12 years and under 18 years of age by certain persons, such as, a person in public authority, priest, home servant, domestic, guardian, teacher, or any person who, in any capacity shall be entrusted with the education or custody of the woman seduced;

Elements: (BAR 2007)

- a. Offended party is a virgin which is presumed if she is unmarried and of good reputation;
 - b. She is over 12 and under 18 years of age;
 - c. Offender has sexual intercourse with her; and
 - d. There is abuse of authority, confidence or relationship on the part of the offender.
2. Seduction of a sister by her brother, or descendant by her ascendant, regardless of her age or reputation.

In this case, it is not necessary that the offended party is still a virgin.

Persons liable for qualified seduction

1. Those who abused their authority:
 - a. Person in public authority;
 - b. Guardian;
 - c. Teacher; or
 - d. Person who, in any capacity, is entrusted with the education or custody of the woman seduced.

NOTE:

In the case of a teacher, it is not necessary that the girl be his student. It is enough that she is enrolled in the same school.

2. Those who abused the confidence reposed in them:
 - a. Priest;
 - b. Home servant; or
 - c. Domestic.
3. Those who abused their relationship:
 - a. Brother who seduced his sister; or
 - b. Ascendant who seduced his descendant.

NOTE: Although in qualified seduction, the age of the offended woman is considered, if the offended party is a descendant or a sister of the offender – no matter how old she is or whether she is a prostitute – the crime of qualified seduction is committed.

Virginity for purposes of qualified seduction

Virginity does not mean physical virginity. It refers to a woman of chaste character or virtuous woman of good reputation.

NOTE: Virginity is not to be understood in a material sense as to exclude the idea of abduction of a virtuous woman of a good reputation. Thus, when the accused claims he had prior sexual intercourse with the complainant, the latter is still to be considered a virgin. But if it was established that the girl had carnal relations with other men, there can be no crime of seduction as she is not a virgin.

SIMPLE SEDUCTION ART. 338

Elements

1. Offended party is over 12 and under 18 years of age;
2. She must be of good reputation, single or widow;
3. Offender has sexual intercourse with her; and
4. It is committed by means of deceit.

The deceit usually takes the form of promise to marry. If the promise to marry is made after the sexual intercourse, there is no deceit. Neither is there deceit if the promise is made by a married man, the woman knowing him to be married.

Virginity of the offended party is not required.

**ACTS OF LASCIVIOUSNESS WITH THE CONSENT
OF THE OFFENDED PARTY
ART. 339**

Elements

1. Offender commits acts of lasciviousness or lewdness;
2. Acts are committed upon a woman who is virgin or single or widow of good reputation, under 18 years of age but over 12 years, or a sister or descendant regardless of her reputation or age; and
3. Offender accomplishes the acts by abuse of authority, confidence, relationship, or deceit.

Acts of lasciviousness under Art.336 (without consent) vis-à-vis Art. 339 (with consent)

ART. 336	ART. 339
The acts are committed under circumstances which, had there been carnal knowledge, would amount to rape.	The acts of lasciviousness are committed under the circumstances which, had there been carnal knowledge, would amount to either qualified seduction or simple seduction.
The offended party is a female or a male.	The offended party could only be female.
If the offended party is a woman, she need not be a virgin.	The offended party must be a virgin.

**CORRUPTION OF MINORS
ART. 340, AS AMENDED BY B.P. 92**

Persons liable under this article

Any person who shall promote or facilitate the prostitution or corruption of persons underage to satisfy the lust of another.

NOTE: Under the present wordings of the law, a single act of promoting or facilitating the corruption or prostitution of minor is sufficient to constitute violation of this article.

Illustration: This is usually the act of a pimp who offers to pleasure seekers, women for the satisfaction of their lustful desires. A mere proposal would consummate the crime. But it

must be to satisfy the lust of another, not the proponent's. The victim must be below 18 years of age.

Necessity that unchaste acts are done

It is NOT necessary that unchaste acts are done; mere proposal consummates the offense.

Victim must be of *good reputation*, not a prostitute or corrupted person.

**WHITE SLAVE TRADE
ART. 341, AS AMENDED BY B.P. 186**

Punishable acts under this article

1. Engaging in the business of prostitution;
2. Profiting by prostitution; and
3. Enlisting the service of any other for the purpose of prostitution.

NOTE: Mere enlisting of the services of women for the purpose of prostitution whether the offender profits or not is punishable.

Corruption of minors vis-à-vis White slave trade

CORRUPTION OF MINORS	WHITE SLAVE TRADE
It is essential that victims are minors	Minority need not be established
Not necessarily for profit	Generally for profit
Committed by a single act	Generally, committed habitually

ABDUCTION

Abduction

Abduction is meant the taking away of a woman from her house or the place where she may be for the purpose of carrying her to another place with intent to marry or to corrupt her (*People v. Crisostomo*, 46 Phil. 775, G.R. No. 19034 February 17, 1923).

1. Forcible abduction (Art. 342)
2. Consented abduction (Art. 343)

**FORCIBLE ABDUCTION
ART. 342**

Elements

1. Person abducted is any woman, regardless of her age, civil status, or reputation;
2. Abduction is against her will; and

NOTE: If the female is below 12 years of age, there need not be any force or intimidation to constitute Forcible Abduction. In fact, the abduction may be with her consent and the reason is because she has no will of her own, and therefore is incapable of giving consent.

3. Abduction is with lewd designs

NOTE: Where lewd design was not proved or shown, and the victim was deprived of her liberty, the crime is kidnapping with serious illegal detention under Art. 267.

Illustration: If the accused carried or took away the victim by means of force and with lewd design and thereafter raped her, the crime is forcible abduction with rape, the former being a necessary means to commit the latter. The subsequent 2 other sexual intercourses committed against the will of the complainant would be treated as two separate counts of Rape (*People v. Bacalso, G.R. No. 94531-32, June 22, 1992*).

Nature of the crime of forcible abduction

The act of the offender is violative of the individual liberty of the abducted, her honor and reputation and of public order.

Sexual intercourse is not necessary

Sexual intercourse is not necessary in forcible abduction, the intent to seduce a girl is sufficient.

NOTE: Rape may absorb forcible abduction if the main objective was to rape the victim.

Crimes against chastity where age and reputation of the victim are immaterial

1. Rape
2. Acts of lasciviousness against the will or without the consent of the offended party
3. Qualified seduction of a sister or descendant
4. Forcible abduction

Q: AAA was about to enter the school campus with her friend when Cayanan, her brother-in-law, arrived on a tricycle and pulled AAA towards the tricycle. She tried shouting but Cayanan covered her mouth. Cayanan brought

AAA to a dress shop to change her clothes since she was in her school uniform, and later to a Jollibee outlet. Afterwards, he brought her to his sister's house and raped her inside a bedroom. AAA told her mother and brother of the incident and she was shown to be suffering from depressive symptoms and presence of sexual abuse. Cayanan interposed the sweetheart defense and presented two love letters supposedly written by AAA. The RTC and CA convicted Cayanan of Forcible Abduction with Qualified Rape. Is Cayanan guilty for the crime of forcible abduction with qualified rape?

A: No, Cayanan should only be liable for qualified rape. Forcible abduction is absorbed in the crime of rape if the real objective of the accused is to rape the victim. In this case, circumstances show that AAA's abduction was with the purpose of raping her (*People v. Cayanan, G.R. No. 200080, July 18, 2014*).

CONSENTED ABDUCTION ART. 343

Elements (BAR 2002)

1. Offended party must be a virgin;

NOTE: The virginity mentioned in this Article should not be understood in its material sense and does not exclude the idea of abduction of a virtuous woman of good reputation because the essence of the offense is not the wrong done to the woman but the outrage to the family and the alarm produced in it by the disappearance of one of its members (*Valdepeñas v. People, G.R. No. L-20687, April 30, 1966*).

2. She must be over 12 and under 18 years of age;
3. Taking away of the offended party must be with her consent, after solicitation or cajolery from the offender; and
4. Taking away of the offended party must be with lewd designs.

NOTE: In consented abduction, it is not necessary that the young victim (a virgin over twelve and under 18) be personally taken from her parent's home by the accused; it is sufficient that he was instrumental in leaving the house. The accused must however use solicitation, cajolery or deceit, or honeyed promises of marriage to induce the girl to escape from her home.

Q: Kim, who is barely 16 years of age, went home late one evening. Her mother scolded her. Kim went out of their house and went to the house of her boyfriend Tristan. The mother of Tristan tried her best to send Kim home but the latter refused to do so. That night, Kim slept in the room of Tristan and they had

sexual intercourse. The mother of Kim filed a case of **Consented Abduction** against Tristan. Will the charge prosper? (*Bar Question*).

A: **NO**, because Kim was not taken away after solicitation or cajolery. Kim was the one who went to the house of Tristan.

**PROSECUTION OF THE CRIMES OF ADULTERY, CONCUBINAGE, SEDUCTION,
ABDUCTION, RAPE, AND ACTS OF LASCIVIOUSNESS
ART. 344**

Distinction between adultery and concubinage vis-à-vis seduction, abduction, and acts of lasciviousness

BASIS	ADULTERY AND CONCUBINAGE	SEDUCTION, ABDUCTION AND ACTS OF LASCIVIOUSNESS
Prosecution	<p>Must be prosecuted upon complaint filed by the offended spouse (BAR 1991)</p> <p>Both the guilty parties, if alive, must be included in the complaint for adultery or concubinage.</p>	<p>Must be prosecuted upon complaint signed by:</p> <ol style="list-style-type: none"> 1. Offended party 2. Her parents 3. Grandparents, or 4. Guardians in the order named above. <p>GR: Offended party, even if a minor, has the right to institute the prosecution for the above mentioned offenses, independently of her parents, grandparents or guardian.</p> <p>XPN: If she is incompetent or incapable of doing so upon grounds other than her minority.</p> <p>NOTE: If the offended woman is of age, she should be the one to file the complaint.</p>
Pardon	<p>Must be made by the offended party to both the offenders.</p> <p>May be a bar to prosecution if made before the institution of the criminal action.</p> <p>May be express or implied.</p>	<p>An express pardon by the offended party or other persons named in the law to the offender, as the case may be, bars prosecution.</p> <p>GR: Parent cannot validly grant pardon to the offender without the express pardon of the girl.</p> <p>XPN: When she is dead or otherwise incapacitated to grant it, her parents, grandparents or guardian may do so for her.</p> <p>GR: Pardon by the offended party who is a minor must have the concurrence of parents.</p> <p>XPN: When the offended girl has no parents who could concur in the pardon.</p>

Parties who may file the complaint where offended minor fails to file the same

1. Parents
2. Grandparents
3. Guardian

NOTE: The right to file the action granted to the parents, grandparents or guardian is exclusive and successive in the order provided.

Legal effect of the marriage of the offender and the offended party

Marriage of the offender with the offended party in seduction, abduction, acts of lasciviousness and rape, extinguishes criminal action or remits the penalty already imposed.

The extinguishment of criminal action by reason of marriage of the offended party with the offender in the crimes of seduction, abduction, and acts of lasciviousness shall extend to co-principals, accomplices and accessories. However, in the case of rape, it is only the liability of the principal which will be extinguished.

Rule on extinction of criminal liability if the rape was committed by the husband

GR: The subsequent forgiveness of the wife extinguishes the criminal action against the husband.

XPN: The crime shall not be extinguished if the marriage is void *ab initio*.

CIVIL LIABILITY OF PERSONS GUILTY OF CRIMES AGAINST CHASTITY ART. 345

Civil liability of persons guilty of rape, seduction or abduction

1. To indemnify the offended woman
2. To acknowledge the offspring, unless the law should prevent him from doing so
3. In every case to support the offspring

Civil liability of the adulterer and the concubine

To indemnify for damages caused to the offended spouse.

NOTE: No civil liability is incurred for acts of lasciviousness.

LIABILITY OF ASCENDANTS, GUARDIANS, TEACHERS OR OTHER PERSONS ENTRUSTED WITH THE CUSTODY OF THE OFFENDED PARTY ART. 346

Crimes covered by this Article

1. Rape;
2. Acts of lasciviousness;
3. Qualified seduction;
4. Simple seduction;
5. Acts of lasciviousness with the consent of the offended party;
6. Corruption of minors;
7. White slave trade;
8. Forcible abduction; and
9. Consented Abduction.

Liability of ascendants, guardians, teachers or other persons entrusted with the custody of the offended party

Persons who cooperate as accomplices in the perpetration of the crimes covered are punished as principals. They are:

1. Ascendants;
2. Guardians;
3. Curators;
4. Teachers; or
5. Any other person who cooperates as accomplice with abuse of authority or confidential relationship.

CRIMES AGAINST THE CIVIL STATUS

**SIMULATION OF BIRTHS, SUBSTITUTION OF ONE CHILD FOR ANOTHER AND CONCEALMENT OR ABANDONMENT OF A LEGITIMATE CHILD
ART. 347**

Punishable acts under this Article

1. Simulation of births;
2. Substitution of one child for another; and
3. Concealing or abandoning any legitimate child with intent to cause such child to lose its civil status.

The commission of any of the acts defined in this Article, must have for its object, the creation of a false civil status. The purpose is to cause the loss of any trace as to the filiation of the child.

When simulation of birth takes place (BAR 2002)

Simulation of birth takes place when the woman pretends to be pregnant when in fact she is not, and on the day of the supposed delivery, takes the child of another as her own.

The woman is liable together with the person who furnishes the child (*Guevara as cited in Reyes, 2008*).

NOTE: The fact that the child will be benefited by simulation of birth is not a defense since it creates a false status detriment of members of the family to which the child is introduced.

In *People v. Sangalang, 74 O.G. 5983*, it was ruled that for the crime to exist, it must be shown that the pretending parents have registered or caused the registration of the child with the Registry of Births or that in so doing they were motivated by a desire to cause the loss of any trace as to the child's filiation to his prejudice.

When substitution takes place

Substitution takes place when X is born of A and B; Y is born of C and D; and the offender with intent to cause the loss of any trace of their filiation, exchanges X and Y without the knowledge of their respective parents.

The substitution may be effected by placing a live child of a woman in place of a dead one of another woman (*Reyes, 2008*).

Elements of the third way of committing the crime (concealing or abandoning any legitimate child with intent to cause such child to lose its civil status)

1. The child must be legitimate;
2. The offender conceals or abandons such child; and
3. The offender has the intent to cause the child to lose its civil status.

Abandoning a Minor under Art.276 vis-à-vis Simulation of Births, Substitution of One Child for Another, and Concealment of a Legitimate Child under Art. 347

ART. 276	ART. 347
Crime against security.	Crime against the civil status of a person.
The offender must be the one who has the custody of the child.	The offender is any person.
The purpose of the offender is to avoid the obligation of rearing and caring the child.	The offender is to cause the child to lose its civil status.

**USURPATION OF CIVIL STATUS
ART. 348**

How crime is committed

It is committed when a person represents himself to be another and assumes the filiation or the parental or conjugal rights of such another person.

There must be intent to enjoy the rights arising from the civil status of another.

Inclusion in civil status

Civil status includes one's public station or the rights, duties, capacities and incapacities which determine a person to a given class.

Qualification of this crime

If the purpose is to defraud offended parties and heirs.

Illustration: Where a person impersonates another and assumes the

latter's right as the son of wealthy parents, the former commits a violation of this article.

**BIGAMY
ART. 349**

Elements (BAR 1996, 2004, 2008, 2012)

1. That the offender has been *legally married*;
2. That the marriage has *not been legally dissolved* or, in case his or her spouse is absent, the *absent spouse could not yet be presumed dead* according to the Civil Code;
3. That he contracts second or subsequent marriage; and
4. That the second or subsequent marriage has all the *essential requisites for validity*, except for the existence of the first marriage.

NOTE: The second husband or wife who knew of the first marriage is an accomplice. The witness who falsely vouched for the capacity of either of the contracting parties is also an accomplice (*Reyes, 2008*).

The second or subsequent marriage should be valid were it not for the first marriage. Otherwise, the charge of Bigamy will not materialize (*People v. Mendoza, G.R. No. L-5877, September 28, 1954*).

Bigamy is NOT a private crime

In the crime of Bigamy, it is immaterial whether it is the first or the second wife who initiates the action, for *it is a public crime* which can be denounced not only by the person affected thereby but even by a civic-spirited citizen who may come to know the same. (*People v. Belen, C.A., 45 O.G., Supp. 5, 88*)

Bigamy vis-à-vis Illegal marriage

Bigamy is a form of illegal marriage. Illegal marriage includes also such other marriages which are performed without complying with the requirements of law, or such premature marriages, or such marriages which was solemnized by one who is not authorized to solemnize the same.

Q: A was legally married to B on November 26, 1992. He later filed a petition seeking the declaration of nullity of their marriage. On 10 December 2001, he contracted a second or subsequent marriage with C. The court later

declared the nullity of the marriage of A and B on June 27, 2006. Did A commit bigamy?

A: YES. At the time of his second marriage with C, his marriage with B was legally subsisting. It is noted that the finality of the decision declaring the nullity of his first marriage with B was only on June 27, 2006 or about five (5) years after his second marriage to C. The second or subsequent marriage of petitioner with C has all the essential requisites for validity (*Teves v. People, G.R. No. 188775, August 24, 2011*).

Generally, a judicial declaration of nullity of marriage is necessary

GR: A judicial declaration of nullity of a previous marriage is necessary before a subsequent one can be legally contracted. One who enters into a subsequent marriage without first obtaining such judicial declaration is guilty of bigamy. This principle applies even if the earlier union is characterized by statutes as "void" (*Mercado v. Tan, G.R. No. 137110, August 1, 2000*).

XPN: Where no marriage ceremony at all was performed by a duly authorized solemnizing officer.

The mere private act of signing a marriage contract bears no semblance to a valid marriage and thus, needs no judicial declaration of nullity. Such act alone, without more, cannot be deemed to constitute an ostensibly valid marriage for which petitioner might be held liable for bigamy (*Morigo v. People, G.R. No. 145226, February 6, 2004*).

NOTE: The death of the first spouse during the pendency of the case does not extinguish the crime, because when the offender married the second spouse, the first marriage was still subsisting.

Q: May the declaration of nullity of the second marriage on the ground of psychological incapacity be raised as a defense in the crime of bigamy?

A: NO. Although the judicial declaration of the nullity of a marriage on the ground of psychological incapacity retroacts to the date of the celebration of the marriage insofar as the vinculum between the spouses is concerned, it is significant to note that said marriage is not without legal effects. Among these effects is that the children conceived or born before the judgment of absolute nullity of the marriage shall



be considered legitimate. There is therefore a recognition *written into the law itself* that such marriage, although void ab initio, may still produce legal consequences. Among these legal consequences is incurring criminal liability for bigamy. As long as a marriage is contracted during the subsistence of a valid first marriage the second marriage is automatically VOID, the nullity of the second marriage is NOT a defense for the avoidance of criminal liability (*Tenebro v. CA, G.R. No. 150758, February 18, 2004*).

Q: Can a person convicted of Bigamy still be prosecuted for concubinage?

A: YES, if he or she continues to cohabit with the live-in partner for which he was accused and tried for Bigamy (*People v. Cabrera, G.R. No. 17855, March 4, 1922*).

Commencement of prescriptive period

The prescriptive period does not commence from the commission thereof but from the time of its discovery by the complainant spouse.

Q: Vitangcol married Alice Eduardo and begot 3 children. After sometime Alice began hearing rumors that her husband was previously married to another woman named Gina Gaerlan. Such marriage was supported by a marriage contract registered with the NSO. This prompted Alice to file a criminal complaint for bigamy against Vitangcol. In his defense, Vitangcol alleges that he already revealed to Alice that he had a “fake marriage” with his college girlfriend Gina and that there is a Certification from the Office of the Civil Registrar that there is no record of the marriage license issued to Vitangcol and his first wife Gina which makes his first marriage as void. Is Vitangcol liable of the crime of bigamy?

A: Yes, Vitangcol is liable of the crime of bigamy. Bigamy consists of the following elements: (1) that the offender has been legally married; (2) that the first marriage had not yet been legally dissolved or in case his or her spouse is absent, the absent spouse could not yet be presumed dead according to the Civil Code; (3) that he contracts a second or subsequent marriage; and (4) that the second or subsequent marriage has all the essential requisites for validity. In this case, all the elements of bigamy are present, since Vitangcol was still legally married to Gina when he married Alice. His defense of Certification from the Office of the Civil Registrar implying that there is no record of the

marriage license issued to Vitangcol and his first wife Gina will not lie since marriages are not dissolved through mere certifications by the civil registrar.

Hence, Vitangcol is still considered to be legally

married to Gina when he married Alice and is not exculpated from the bigamy charged (*Vitangcol v. People, G.R. No. 207406, January 13, 2016*).

MARRIAGE CONTRACTED AGAINST PROVISIONS OF LAWS ART. 350

Elements (BAR 1993, 2004)

1. Offender contracted marriage;
2. He knew at the time that the:
 - a. Requirements of the law were not complied with; or
 - b. Marriage was in disregard of a legal impediment.
3. The act of the offender does not constitute bigamy.

Illustration: Where the parties secured a falsified marriage contract complete with the supposed signature of a mayor and which they presented to the priest who solemnized the marriage, they committed Illegal Marriage (Sandoval).

Qualification of this crime

If either of the contracting parties obtains the consent of the other by means of violence, intimidation or fraud.

Conviction of a violation of Article 350 of the Revised Penal Code involves moral turpitude. The respondent is disqualified from being admitted to the bar (*Villasanta v. Peralta, 101Phil. 313*).

PREMATURE MARRIAGES ART. 351

R.A. No. 10655 decriminalized the act of premature marriage

Without prejudice to the provisions of the Family Code on paternity and filiation, Article 351 of Act No. 3815, otherwise known as the Revised Penal Code, punishing the crime of premature marriage committed by a woman, is hereby repealed (*Sec. 1*).

PERFORMANCE OF ILLEGAL MARRIAGE CEREMONY ART. 352

Persons liable under this article

Art. 352 punishes priests or ministers of any religious denomination or sect, or civil authorities who shall perform or authorize any illegal marriage ceremony.

NOTE: Art. 352 presupposes that the priest or minister or civil authority is authorized to solemnize marriages. If the priest or ministers are not authorized to solemnize marriage under the law, and shall perform the marriage ceremony, they may be prosecuted for Usurpation of Authority or Official Functions under Art. 177 and not under this article.

CRIMES AGAINST HONOR

**LIBEL
ART. 353**

Libel

Libel is a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.

Commission of libel

Libel is a defamation committed by means of writing, printing, lithography, engraving, radio, phonograph, painting or theatrical or cinematographic exhibition, or any similar means.

Persons liable for libel

1. Any person who shall publish, exhibit or cause the publication or exhibition of any defamation in writing or by similar means; or
2. The author or editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine or serial publication, for defamation contained therein to the same extent as if he were the author thereof.

Elements (BAR 2005, 2010)

1. There must be an imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status or circumstance;
2. Imputation must be made publicly; **(BAR 2003)**
3. It must be malicious;
4. It must be directed at a natural or juridical person, or one who is dead; **(BAR 2002)** and
5. It must tend to cause the dishonor, discredit or contempt of the person defamed.

No necessity in naming the person accused

In order to maintain a libel suit, it is essential that the victim be identifiable although it is not necessary that he be named. It must be shown that at least a third person could identify him as the object of the libelous publication (*Borjal v. CA, G.R. No. 126466 January 14, 1999*).

It is enough if by intrinsic reference the allusion is apparent or if the publication contains matters of description or reference to facts and circumstances from which others reading the article may know the person alluded to, or if the latter is pointed out by extraneous circumstances so that those knowing such person could and did that he was the person referred to (*Diaz v. People, G.R. No. 159787, May 25, 2007*).

Test to determine whether a statement is defamatory

To determine “whether a statement is defamatory, the words used are to be construed in their entirety and should be taken in their plain, natural and ordinary meaning as they would naturally be understood by persons reading them, unless it appears that they were used and understood in another sense.” Moreover, charge is sufficient if the words are calculated to induce the hearers to suppose and understand that the person or persons against whom they were uttered were guilty of certain offenses or are sufficient to impeach the honesty, virtue or reputation or to hold the person or persons up to public ridicule (*Lopez y Aberasturi v. People and Escalante, G.R. No. 172203, February 14, 2011*).

The intention or meaning of the writer is immaterial. It is the meaning that the words in fact conveyed on the minds of persons of reasonable understanding, discretion and candor, which should be considered.

Q: Rima and Alegre exposed various alleged complaints from students, teachers and parents against Ago Medical and Educational Center-Bicol Christian College of Medicine (“AMEC”) and its administrators. Rima and Alegre remarked that “AMEC is a dumping ground, garbage of xxx moral and physical misfits”; and AMEC students who graduate “will be liabilities rather than assets” of the society. Claiming that the broadcasts were defamatory, AMEC filed a complaint for damages against FBNI, Rima and Alegre. Are the aforementioned remarks or broadcasts libelous?

A: YES. There is no question that the broadcasts were made public and imputed to AMEC defects or circumstances tending to cause it dishonor, discredit and contempt. Rima and Alegre’s remarks are libelous *per se*. Taken as a whole; the broadcasts suggest that AMEC is a money-making

institution where physically and morally unfit teachers abound. Every defamatory imputation is presumed malicious. Rima and Alegre failed to show adequately their good intention and justifiable motive in airing the supposed gripes of the students. As hosts of a documentary or public affairs program, Rima and Alegre should have presented the public issues free from inaccurate and misleading information (*Filipinas Broadcasting Network, Inc. v. Ago Medical and Educational Center-Bicol Christian College of Medicine*, G.R. No. 14199, January 17, 2005).

**REQUIREMENT FOR PUBLICITY
ART. 354**

Publication of the libelous article is not necessary

It is not necessary that the libelous article must be published; communication of the defamatory matter to some third persons is sufficient.

It is not required that the person defamed has read or heard about the libelous remark. What is material is that a third person has read or heard the libelous statement - for a man's reputation is the estimate in which others hold him, not the good opinion which he has of himself.

Illustration: The delivery of the article to the typesetter is sufficient publication (*U.S. v. Crame*, G.R. No. 4328, February 13, 1908).

The sending to the wife of a letter which maligns the husband was considered sufficient publication, for the spouse is a third person to the victim defamed (*U.S. v. Urbinana*, G.R. No. 927, November 8, 1902).

Q: Dolores Magno was charged and convicted of libel for the writings on the wall and for the unsigned letter addressed to the Alejandro spouses, containing invectives directed against Cerelito Alejandro. Dolores contends that the prosecution failed to establish the presence of the elements of authorship and publication of the malicious writings on the wall, as well as the unsigned letter addressed to the Alejandro spouses. She argues that since the letter was addressed to the spouses, Fe (Cerelito's wife) was, insofar as Cerelito is concerned, not a third person for purposes of publication. Is she liable?

A: To be liable for libel under Art. 353 of the RPC, the following elements must be shown to exist:

1. The allegation of a discreditable act or condition concerning another;
2. Publication of the charge;
3. Identity of the person defamed; and
4. Existence of malice.

The element of publication is satisfied when, after writing the defamatory matter, the same is made known to someone other than the person to whom it is being pertained to. If the statement is sent straight to a person for whom it is written there is no publication of it. It could not be said, however, that there was no publication with respect to Fe. While the letter in question was addressed to "Mr. Cerelito & Fe Alejandro," the invectives contained therein were directed against Cerelito only. *Writing to a person other than the person defamed is sufficient to constitute publication*, for the person to whom the letter is addressed is a *third person* in relation to its writer and the person defamed therein (*Dolores Magno v. People of the Philippines*, G.R. No. 133896, January 27, 2006).

Malice

Malice is a term used to indicate the fact that the offender is prompted by personal ill-will or spite and speaks not in response to duty but merely to injure the reputation of the person defamed.

NOTE: Malice is presumed and the test is the character of the words used. The meaning of the writer or author is immaterial.

Kinds of malice

1. *Malice in fact* maybe shown by proof of ill-will, hatred, or purpose to injure.
2. *Malice in law* is presumed from a defamatory imputation. However, presumption is rebutted if it is shown by the accused that:
 - a. Defamatory imputation is true, in case the law allows proof of the truth of the imputation;
 - b. It is published with good intention; **and**
 - c. There is justifiable motive for making it.

When is malice not presumed

Malice is not presumed in the following:

1. Private communication made by any person to another in the performance of any legal, moral or social, duty.

Requisites:

- a. Person who made the communication had a legal moral or social duty to



- make the communication or at least, he had an interest to be upheld;
- b. Communication is addressed to an officer, or a board, or superior, having some interest or duty in the matter; and
- c. Statements in the communication are made in good faith without malice (in fact).

2. Fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative, or other official proceedings which are not of confidential nature, or of any statement, report, or speech delivered in the exercise of their functions.

Requisites:

- a. That it is a fair and true report of a judicial, legislative or other official proceedings which are **not of confidential nature**, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers **in the exercise** of their functions;
- b. That it is made in **good faith**; and
- c. That it is **without any comments or remarks**.

NOTE: The instances when malice is not presumed are examples of malice in fact.

Q: Do the defamatory remarks and comments on the conduct or acts of public officers which are related to the discharge of their official duties constitute libel?

A: NO, it will not constitute libel if the accused proves the truth of the imputation. But any attack upon the private character of the public officers on matters which are not related to the discharge of their official functions may constitute Libel.

A written letter containing libelous matter cannot be classified as privileged when publicly published and circulated (*Sazon v. CA, G.R. No. 120715, March 29, 1996*).

Invocation of freedom of speech

Although a wide latitude is given to critical utterances made against public officials in the performance of their official duties, or against public figures on matters of public interest, such criticism does not automatically fall within the ambit of constitutionally protected speech.

If the utterances are false, malicious or unrelated to a public officer's performance of his duties or irrelevant to matters of public interest involving public figures, the same may give rise to criminal and civil liability (*Fermin v. People, G.R. No. 157643, March 28, 2008*).

Doctrine of Fair Comment

The doctrine of fair comment means that while in general every discreditable imputation publicly made is deemed false, because every man is presumed innocent until his guilt is judicially proved, and every false imputation is deemed malicious, nevertheless, when the discreditable imputation is directed against a public person in his public capacity, it is not necessarily actionable. In order that such discreditable imputation to a public official may be actionable, it must either be a false allegation of fact or a comment based on a false supposition. If the comment is an expression of opinion, based on established facts, then it is immaterial that the opinion happens to be mistaken, as long as it might reasonably be inferred from the facts (*Borjal v. CA, G.R. No. 126466 January 14, 1999*).

Privileged communication

It is a communication made bona fide upon any subject matter in which the party communicating has an interest, or in reference to which he has a duty and the person to whom the communication is given has a corresponding interest.

Criticism

Deals only with such things as shall invite public attention or call for public comment. It does not follow a public man into his private life nor pry into his domestic concerns.

Common defense in libel

That it is covered by privileged communication.

1. *Absolute* – not actionable even if the author has acted in bad faith:
 - a. like the statements made by members of Congress in the discharge of their official functions;
 - b. Allegations or statements made by the parties or their counsel in their pleadings or motions or during the hearing of judicial proceedings;

c. Answers given by witnesses in reply to questions propounded to them, in the course of said proceedings, provided that said allegations or statements are relevant to the issues, and the answers are responsive or pertinent to the questions propounded to said witnesses (*Alcantara v. Ponce*, G.R. No. 156183, February 28, 2007).

2. *Conditional or qualified* – like a private communication made by any person to another in the performance of any legal, moral, or social duty, and a fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature. Here, even if the statements are defamatory, there is no presumption of malice. The prosecution must prove malice in fact to convict the accused.

Q: In a judicial proceeding, when can a defamatory imputation be said to be a privileged communication?

A: The one obstacle that those pleading the defense of privileged communication must hurdle is the test of relevancy. Under this test, a matter alleged in the course of the proceedings need not be in every case material to the issues presented but should be legitimately related to the issues or be so pertinent to the controversy that it may become the subject of inquiry in the course of trial. (*Alcantara v. Ponce*, G.R. No. 156183, February 28, 2007)

Q: Ponce filed a string of criminal complaints against Alcantara and his family, including one for *estafa*. In essence, Ponce alleged that Alcantara had swindled him out of 3,000,000 shares of Floro Cement Corporation. It was in the course of the preliminary investigation of the complaint for *estafa* that Ponce, shortly after giving his sur-rejoinder affidavit, submitted to the investigating prosecutor a newsletter purporting to be a belated annex to the affidavit. It was prefaced with the quotation "For every extraordinary fortune there is a great crime" and the text: An example is Marcos. We need not discuss this. Second example is the Alcantaras. The newsletter then went on to discuss SEC Case No. 2507 in which Ponce accused the Alcantaras of defrauding him of his shares in Iligan Cement Corporation. Claiming that the statements in the newsletter were defamatory, Alcantara filed a complaint for libel. Ponce on the other hand raised privileged

communication as a defense. Is the defense tenable?

A: YES. It is a settled principle in this jurisdiction that statements made in the course of judicial proceedings are absolutely privileged. This absolute privilege remains regardless of the defamatory tenor and the presence of malice if the same are *relevant, pertinent* or *material* to the cause in hand or subject of the inquiry. Furthermore, the newsletter qualified as a communication made *bona fide* upon any subject-matter in which the party communicating has an interest. The controversial statements were made in the context of a criminal complaint against Alcantara, albeit for other, separate acts involving greed and deceit, and were disclosed only to the official investigating the complaint. Liberally applying the privileged communication doctrine, these statements were still relevant to the complaint under investigation because, like the averments therein, they also involved Alcantara's alleged deceitfulness (*Alcantara v. Ponce*, G.R. No. 156183, February 28, 2007).

Multiple Publication Rule in Libel

A single defamatory statement, if published several times, gives rise to as many offenses as there are publications. For purposes of Art. 360 of RPC, as amended, every time the same written matter is communicated such communication is considered a distinct and separate publication of libel (*Soriano v. Intermediate Appellate Court*, 167 SCRA 222).

LIBEL BY MEANS OF WRITING OR SIMILAR MEANS ART. 355

Commission of libel

Libel may be committed by:

1. Writing;
2. Printing;
3. Lithography;
4. Engraving;
5. Radio; **(BAR 2002)**
6. Phonograph;
7. Painting;
8. Theatrical exhibition;
9. Cinematographic exhibition; or
10. Any similar means. **(BAR 2005)**

Defamation through amplifiers is not libel, but oral defamation (*People v. Santiago*, G.R. No. L-17663, May 30, 1962).



“In addition to the civil action which may be brought by the offended party”.

Notwithstanding this clause in Article 355, civil action for damages may be filed *simultaneously* or *separately* with the criminal action (Reyes, 2012).

**THREATENING TO PUBLISH AND OFFER TO PREVENT SUCH PUBLICATION FOR A COMPENSATION
ART. 356**

Punishable acts under this Article

1. Threatening another to publish a libel concerning him, or his parents, spouse, child, or other members of his family; and
2. Offering to prevent the publication of such libel for compensation, or money consideration.

Illustration

The accused threatened to publish in a weekly periodical, certain letters, amorous in nature, written by a married woman and addressed by her to a man, not her husband, unless paid P4,000 to them. (*U.S. v. Eguia, et. al., 38 Phil. 857*)

Blackmail

Any unlawful extortion of money by threats of accusation or exposure (*US v. Eguia., 38 Phil. 857*).

Felonies where blackmail is committed

1. Light threats; and (Art. 283)
2. Threatening to publish, or offering to prevent the publication of, a libel for compensation. (Art. 356)

**PROHIBITED PUBLICATION OF ACTS REFERRED TO IN THE COURSE OF OFFICIAL PROCEEDINGS
ART. 357**

Elements

1. That the offender is a *reporter, editor or manager* of a newspaper daily or magazine;
2. That he publishes facts connected with the *private life* of another; and
3. That such facts are *offensive to the honor, virtue and reputation* of said person.

The prohibition applies even though said publication be made in connection with or under

the pretext that it is necessary in the narration of any judicial or administrative proceedings wherein such facts have been mentioned.

Gag Law

Newspaper reports on cases pertaining to adultery, divorce, issues about the legitimacy of children, etc., will necessarily be barred from publication. (Reyes, 2012).

Under R.A No. 1477, a newspaper reporter cannot be compelled to reveal the source of the news report he made, unless the court or a House or committee of Congress finds that such revelation is demanded by the security of the state (Reyes, 2012).

**SLANDER
ART. 358**

Kinds of oral defamation

1. Simple slander; and
2. Grave slander, when it is of a serious and insulting nature.

Elements of oral defamation

1. There must be an imputation of a crime, or a vice or defect, real or imaginary, or any act, omission, condition, status or circumstances;
2. Imputation must be made publicly;
3. The imputation must be malicious;
4. The imputation must be directed at a natural or juridical person, or one who is dead; and
5. The imputation must tend to cause dishonor, discredit or contempt of the person defamed (*People v. Maratas, April 11, 1980*).

NOTE: The imputation, of course, must be verbally made or uttered. The slanderous remarks need not to be heard by the offended party as long as they are uttered in the presence of a third person.

Slander

It is a libel committed by oral (spoken) means, instead of in writing. Also defined as the speaking base and defamatory words which tend to prejudice another in his reputation.

Factors that determine the gravity of oral defamation

1. Expressions used;

2. Personal relations of the accused and the offended party; and
3. Circumstances surrounding the case.

NOTE: Social standing and the position of the offended party are also taken into account.

Q: Lando and Marco are candidates in the local elections. In his speeches Lando attacked his opponent Marco alleging that he is the son of Nanding, a robber and a thief who amassed his wealth through shady deals. May Marco file a case against Lando for grave oral defamation? (BAR 1990)

A: Marco cannot file a case for grave oral defamation. If at all, he may file a case for light slander. In the case of *People v. Laroga* (40 O.G. 123), it was held that defamation in political meeting when feelings are running high and people could not think clearly, only amount to light slander.

SLANDER BY DEED ART. 359

Slander by deed (BAR 1994)

Slander by deed is a crime against honor which is committed by performing any act which casts dishonor, discredit, or contempt upon another person.

Elements

1. Offender performs any act not included in any other crime against honor;
2. Such act is performed in the presence of other person or persons; and
3. Such act casts dishonor, discredit or contempt upon the offended party.

Kinds of slander by deed

1. *Simple slander by deed* – performance of an act, not use of words.
2. *Grave slander by deed* – that is which is of a serious crime.

How to determine whether an act is slander by deed or not

Whether a certain slanderous act constitutes slander by deed of a serious nature or not, depends on the social standing of the offended party, the circumstances under which the act was committed, the occasion, etc.

Illustration: Thus, slapping a lady in a dance not for the purpose of hurting her but to cause her shame and humiliation for refusing to dance with the accused is slander by deed.

This crime involves an *act*, while libel or slander involves *words* written or uttered.

Slander by deed vis-a-vis acts of lasciviousness

Kissing a girl in public and touching her breast without lewd designs, committed by a reject suitor to cast dishonor on the girl was held to be slander by deed and not acts of lasciviousness (*People v. Valencia*, CA, G.R. No. 4136-R, May 29, 1950).

PERSONS RESPONSIBLE ART. 360

Persons liable for libel

1. Person who publishes, exhibits or causes the publication or exhibition of any defamation in writing or similar means;
2. Author or editor of a book or pamphlet;
3. Editor or business manager of a daily newspaper magazine or serial publication; or
4. Owner of the printing plant which publishes a libelous article with his consent and all other persons who in any way participate in or have connection with its publication.

Where to file a complaint for libel

Criminal and civil actions for damages in case of written defamations shall be filed simultaneously or separately with the court of first instance of the province or city:

1. Where the libelous article is printed and first published; or
2. Where any of the offended parties actually resides at the time of the commission of the offense.

NOTE: The court where the criminal action or civil action for damages is first filed shall acquire jurisdiction to the exclusion of other courts.

Q: Is the author of a libelous article the only one liable for libel?

A: NO. Article 360 includes not only the author or the person who causes the libelous matter to be published, but also the person who prints or publishes it. Proof of knowledge of and participation in the publication of the offending



article is not required, if the accused has been specifically identified as “author, editor, or proprietor” or “printer/publisher” of the publication (*Fermin v. People, G.R. No. 157643, March 28, 2008*).

Rationale for the criminal liability of persons enumerated in Art. 360 of the RPC

It was enunciated in *U.S. v. Ocampo*, that according to the legal doctrines and jurisprudence of the United States, the printer of a publication containing libelous matter is liable for the same by reason of his direct connection therewith and his cognizance of the contents thereof. With regard to a publication in which a libel is printed, not only is the publisher but also all other persons who in any way participate in or have any connection with its publication are liable as publishers (*Fermin v. People, ibid.*). **(BAR 2013)**

Q: The COMELEC Chairman was sued for libel due to his defamatory statements against Photokina Marketing Corporation. The Chairman raised as a defense the lack of jurisdiction of the RTC since he delivered the speech in his official capacity as COMELEC Chair. The RTC ruled that it was Sandiganbayan and not RTC which has jurisdiction over the case. Is the RTC correct?

A: NO. Article 360 of the Revised Penal Code as amended by Republic Act No. 4363, is explicit on which court has jurisdiction to try cases of written defamations: The grant to the Sandiganbayan of jurisdiction over offenses committed in relation to public office, similar to the expansion of the jurisdiction of the MTCs, did not divest the RTC of its exclusive and original jurisdiction to try written defamation cases regardless of whether the offense is committed in relation to office (*People v. Benipayo, G.R. No. 154473, April 24, 2009*).

Q: A large group of disgruntled plan holders of Pacific Plans, Inc. was sued for libel for publishing in a website defamatory statements against the owners of Pacific Plans, Inc. The libel suit was filed before the Regional Trial Court of Makati alleging that it is in Makati where the website was first accessed, and hence, it is in Makati where it was first published. Does the RTC Makati has jurisdiction over the libel case?

A: NO, the venue of libel cases where the complainant is a private individual is limited to

only either of two places, namely: 1) where the complainant actually resides at the time of the commission of the offense; or 2) where the alleged defamatory article was printed and first published. If the circumstances as to where the libel was printed and first published are used by the offended party as basis for the venue in the criminal action, the Information must allege with particularity where the defamatory article was printed and first published, as evidenced or supported by, for instance, the address of their editorial or business offices in the case of newspapers, magazines or serial publications. This pre-condition becomes necessary in order to forestall any inclination to harass. The same measure cannot be reasonably expected when it pertains to defamatory material appearing on a website on the internet as there would be no way of determining the *situs* of its printing and first publication. To credit the premise of equating his first access to the defamatory article on the website in Makati with “printing and first publication” would spawn the very ills that the amendment to Article 360 of the RPC sought to discourage and prevent (*Bonifacio et al v. RTC Makati, G.R. No. 184800, May 5, 2010*).

**PROOF OF TRUTH
ART. 361**

Admissibility of proof of truth

Proof of truth is admissible in any of the following:

1. When the act or omission imputed constitutes a crime regardless of whether the offended party is a private individual or a public officer.
2. When the offended party is a government employee, even if the act or omission imputed does not constitute a crime, provided, it is related to the discharge of his official duties.

NOTE: Proof of truth must rest upon positive, direct evidence upon which a definite finding may be made by the court. But probable cause for belief in the truth of the statement is sufficient. **(BAR 2009)**

Proof of truth is not sufficient

Proof of truth is NOT enough. It is also required that the matter charged as libelous was published with good motives and for justifiable ends.

Possible defenses in the crime of libel

1. It appears that the matters charged as libelous is true;

2. It was published with good motives; and
3. For a justifiable end

**LIBELOUS REMARKS
ART. 362**

Libelous remarks or comments on matters privileged, if made with malice in fact, do not exempt the author and editor.

Q: What is the liability of newspaper reporter for distorting facts connected with official proceedings?

The author or the editor of a publication who distorts, mutilates or discolours the official proceedings reported by him, add comments thereon to cast aspersion on the character of the parties concerned, is guilty of libel, notwithstanding the fact that the defamatory matter is published in connection with a privileged matter (*U.S. v. Dorr, G.R. No. 1049, May 16, 1903; Reyes, 2008*).

Guidelines in the observance of a rule of preference in the imposition of penalties in libel cases

All courts and judges concerned should henceforth take note of the foregoing rule of preference set by the Supreme Court on the matter of the imposition of penalties for the crime of libel bearing in mind the following principles:

1. This Administrative Circular does not remove imprisonment as an alternative penalty for the crime libel under Art. 355 of the RPC.
2. The Judges concerned may, in the exercise of sound discretion, and taking into consideration the peculiar circumstances of each case, determine whether the imposition of a fine alone would best serve the interests of justice or whether forbearing to impose imprisonment would depreciate the seriousness of the offense, work violence on the social order, or otherwise be contrary to the imperative of justice
3. Should only a fine be imposed and the accused be unable to pay the fine, there is no legal obstacle to the application of the RPC provision on subsidiary imprisonment.

**ADMINISTRATIVE CIRCULAR 08-2008 RE:
GUIDELINES IN THE OBSERVANCE OF A RULE
OF PREFERENCE IN THE IMPOSITION OF
PENALTIES IN LIBEL CASES**

PREFERENCE OF IMPOSITION OF FINE

NOTE: Art. 355 of the RPC penalizes libel with *prision correctional* in its minimum and medium periods **or** fine ranging from 200 to 6,000 pesos, **or both**, in addition to the civil action which may be brought by the offended party.

In the following cases, the Court opted to impose only a fine on the person convicted of the crime of libel:

In *Sazon v. CA (G.R. No. 120715, March 29, 1996)*, the Court modified the penalty imposed upon petitioner, an officer of a homeowners' association, for the crime of libel from imprisonment and fine in the amount of P200.00, to fine only of P3,000.00, with subsidiary imprisonment in case of insolvency, for the reason that he wrote the libelous article merely to defend his honor against the malicious messages that earlier circulated around the subdivision, which he thought was the handiwork of the private complainant.

In *Mari v. CA (G.R. No. 127694, May 31, 2000)*, where the crime involved is slander by deed, the Court modified the penalty imposed on the petitioner, an ordinary government employee, from imprisonment to fine of P1,000.00, with subsidiary imprisonment in case of insolvency, on the ground that the latter committed the offense in the heat of anger and in reaction to a perceived provocation.

In *Brillante v. CA (G.R. Nos. 118757 & 12157, November 11, 2005)*, the Court deleted the penalty of imprisonment imposed upon petitioner, a local politician, but maintained the penalty of fine of P4,000.00, with subsidiary imprisonment in case of insolvency, in each of the (5) cases of libel, on the ground that the intensely feverish passions evoked during the election period in 1988 must have agitated petitioner into writing his open letter; and that incomplete privileged communication should be appreciated in favor of petitioner, especially considering the wide latitude traditionally given to defamatory utterances against public officials in connection with or relevant to their performance of official duties or against public figures in relation to matters of public interest involving them.

In *Buatis, Jr. v. People (G.R. No. 142509, March 24, 2006)*, the Court opted to impose upon petitioner, a lawyer, the penalty of fine only for the crime of libel considering that it was his first offense and



he was motivated purely by his belief that he was merely exercising a civic or moral duty to his client when wrote the defamatory letter to private complainant.

**INCRIMINATING INNOCENT PERSON
ART. 363**

Elements

1. Offender performs an act;
2. By such act he directly incriminates or imputes to an innocent person the commission of a crime; and
3. Such act does not constitute perjury.

NOTE: The crime of incriminatory machinations is limited to planting evidence and the like, which tend directly to cause false prosecution.

Incriminating an innocent person vis-à-vis Perjury by making false accusation

INCRIMINATING AN INNOCENT PERSON	PERJURY BY MAKING FALSE ACCUSATION
Committed by performing an act by which the offender directly incriminates or imputes to an innocent person the commission of a crime.	The gravamen of the offense is the imputation itself, falsely made, before an officer.
Limited to the act of planting evidence and the like, in order to incriminate an innocent person.	Giving of false statement under oath or the making of a false affidavit, imputing to a person the commission of a crime.

Incrimatory machination vis-à-vis Defamation

INCRIMINATORY MACHINATION	DEFAMATION
Offender performs acts to directly impute to an innocent person the commission of the crime.	Offender avails himself of written or spoken words in besmirching the victim's reputation.

**INTRIGUING AGAINST HONOR
ART. 364**

Intriguing against honor

Any scheme or plot which may consists of some trickery.

Persons liable

Any person who shall make any intrigue which has for its principal purpose to blemish the honor or reputation of another person.

Intriguing against honor vis-à-vis Slander

INTRIGUING AGAINST HONOR	SLANDER
The source of the defamatory utterance is unknown and the offender simply repeats or passes the same, without subscribing to the truth thereof.	Offender made the utterance, where the source of the defamatory nature of the utterance is known, and offender makes a republication thereof, even though he repeats the libelous statement as coming from another, as long as the source is identified.

Intriguing against honor vis-à-vis Incriminating an innocent person

INTRIGUING AGAINST HONOR	INCRIMINATING AN INNOCENT PERSON
The offender resorts or gossips for the purpose of disparaging the honor or reputation of another	The offender performs an act that would incriminate or impute to an innocent person the commission of a crime

CRIMINAL NEGLIGENCE

**IMPRUDENCE AND NEGLIGENCE
ART. 365**

Punishable acts (BAR 1993, 2001, 2008, 2009)

1. Committing through reckless imprudence any act which, had it been intentional, would constitute a grave or less grave felony or light felony;
2. Committing through simple imprudence or negligence an act which would otherwise constitute a grave or a less serious felony;
3. Causing damage to the property of another through reckless imprudence or simple imprudence or negligence; and
4. Causing through simple imprudence or negligence some wrong which, if done maliciously, would have constituted a light felony.

Elements of reckless imprudence

1. Offender does or fails to do an act;
2. The doing of or the failure to do that act is voluntary;
3. It be without malice;
4. Material damage results; and
5. There is an inexcusable lack of precaution on the part of the person performing or failing to perform such act taken into consideration: **(BAR 2007)**
 - a. Employment or occupation
 - b. Degree of intelligence
 - c. Physical condition
 - d. Other circumstances regarding persons, time and place

Elements of simple imprudence

1. There is lack of precaution on the part of the offender; **(BAR 2008)** and
2. Damage impending to be caused is not immediate nor the danger clearly manifested.

NOTE: Art. 64, relative to mitigating and aggravating circumstances, is not applicable to crimes committed through negligence.

Imprudence vis-à-vis Negligence

IMPRUDENCE	NEGLIGENCE
Deficiency of action.	Deficiency of perception.

Failure in precaution.	Failure in advertence.
To avoid wrongful acts: one must take the necessary precaution once they are foreseen.	To avoid wrongful acts: paying proper attention and using due diligence in foreseeing them.

NOTE: The Penal Code does not draw a well-defined demarcation line between negligent acts that are delictual and those which are quasi-delictual. It is possible that a negligent act may be delictual and quasi-delictual at the same time.

Effect of accident in relation to Art.275, par. 2 (failure to help or render assistance to another whom he has accidentally wounded or injured) vis-à-vis Art. 365 (imprudence and negligence)

ART. 275, PAR. 2	ART. 365
Falls under Crimes Against Security.	Falls under Criminal Negligence.
Committed by means of dolo.	Committed by means of culpa.
Failure to help or render assistance to another whom one has accidentally wounded or injured is an offense.	Failure to lend help to one's victim is neither an offense by itself nor an element of the offense therein penalized. Its presence merely increases the penalty by one degree. It must be specifically allege in the information.

GR: Failing to lend help is a qualifying circumstance; it raises the penalty 1 degree higher.

XPN: The driver can leave his vehicle *without* aiding the victims if he:

1. Is in imminent danger of being harmed
2. Wants to report to the nearest officer of the law, or
3. Desires to summon a physician or a nurse for medical assistance to the injured (*Sec. 55 of RA 4136*).

Doctrine of last clear chance

The last clear chance doctrine states that the contributory negligence of the party injured will not defeat the action if it be shown that the accused might, by the exercise of reasonable care and prudence, have avoided the consequences of the negligence of the injured party.



Emergency rule

The *emergency rule* provides that an automobile driver who, by the negligence of another and not by his own negligence, is suddenly placed in an emergency and compelled to act instantly to avoid a collision or injury is not guilty of negligence if he makes such a choice which a person of ordinary prudence placed in such a position might make even though he did not make the wisest choice.

Doctrine of *res ipsa loquitur*

It means that the thing speaks for itself. Where the thing which causes injury is shown to be under the management of the defendant, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of an explanation by the defendant, that the accident arose from want of care (*Jarcia v. People, G.R. No. 187926, February 15, 2012*).

Elements

1. The accident was of a kind which does not ordinarily occur unless someone is negligent;
2. The instrumentality or agency which caused the injury was under the exclusive control of the person in charge; and
3. The injury suffered must not have been due to any voluntary action or contribution of the person injured.

NOTE: Under the *res ipsa loquitur* rule in its **broad sense**, the fact of the occurrence of an injury, taken with the surrounding circumstances, may permit an inference or raise a presumption of negligence, or make out a plaintiff's *prima facie* case, and present a question of fact for defendant to meet with an explanation. It is not a rule of substantive law but more a procedural rule. Its mere invocation does not exempt the plaintiff with the requirement of proof to prove negligence. It merely allows the plaintiff to present along with the proof of the accident, enough of the attending circumstances to invoke the doctrine, creating an inference or presumption of negligence and to thereby place on the defendant the burden of going forward with the proof (*Estrada v. Desierto, G.R. Nos. 146710-15, April 3, 2001*).

Effect of contributory negligence on the part of the victim

Contributory negligence on the part of the victim is not a valid defense to exculpate one from criminal liability, although it could be mitigated (*Addenbrook v. People, L-22995, June 29, 1967*).

NOTE: Reckless Imprudence is not only a mode or means of committing a crime. It is a crime by itself.

Thus, when a person drove his car recklessly hitting a pedestrian who was killed, the crime is Reckless Imprudence resulting to homicide NOT homicide through reckless imprudence.

The essence of the quasi offense of criminal negligence under article 365 of the Revised Penal Code lies in the execution of an imprudent or negligent act that, if intentionally done, would be punishable as a felony. The law penalizes thus the negligent or careless act, not the result thereof. The gravity of the consequence is only taken into account to determine the penalty, it does not qualify the substance of the offense. And, as the careless act is single, whether the injurious result should affect one person or several persons, the offense (criminal negligence) remains one and the same, and cannot be split into different crimes and prosecutions (*Ivler v. San Pedro, G.R. No. 172716, November 17, 2010*).

Q: Y while alighting from his vehicle was hit by X with his car. This caused Y to be thrown four meters away from his jeepney. X was charged with frustrated murder and convicted in the RTC of frustrated homicide. Upon appeal in the CA, the crime was modified to reckless imprudence resulting in serious physical injuries. X contends that he is not liable for such crime because he lacked criminal intent; that he was not negligent in driving his pick-up truck; and that the CA should have appreciated voluntary surrender as a mitigating circumstance in his favor. Is X's contention correct?

The contention of X is wrong. To constitute the offense of reckless driving, the act must be something more than a mere negligence in the operation of the motor vehicle, but a willful and wanton disregard of the consequences is required. The fact that Y's body was thrown four (4) meters away from his jeep showed that X was driving his pick-up at a fast speed when he overtook the jeep of Y.

A: The mitigating circumstance of voluntary surrender cannot be appreciated in his favor. Paragraph 5 of Article 365, Revised Penal Code,

expressly states that in the imposition of the penalties, the courts shall exercise their sound discretion, without regard to the rules prescribed in Article 64 of the Revised Penal Code (*Mariano v. People*, G.R. No. 178145, July 7, 2014).

Q: X, while descending from a curved path, collided with a motorcycle, killing Y, one of its passengers, and causing serious physical injuries to the two other victims. The body of Y was loaded to the vehicle of X but the latter's engine would not start; thus the body was loaded in a different vehicle. The jack of X was used to extricate the body of Y from being pinned under the vehicle of X. X, in his defense, claimed that it was not his fault that the tricycle swerved in his direction. X was charged with **Reckless Imprudence Resulting to Homicide with Double Serious Physical Injuries and Damage to Property under Article 365 in relation to Article 263 of the RPC** "with the aggravating circumstance that accused failed to lend on the spot to the injured party such help that was in his hands to give". Should the court appreciate the alleged aggravating circumstance?

A: **No.** The aggravating circumstance "that accused failed to lend on the spot to the injured party such help that was in his hands to give" should not be appreciated. Verily, it is the inexcusable lack of precaution or conscious indifference to the consequences of the conduct which supplies the criminal intent in Article 365. The limiting element in the last paragraph of Article 365 of the RPC, which imposes the penalty next higher in degree upon the offender who "fails to lend on the spot to the injured parties such help as may be in his hands to give.", according to case law, (a) is dependent on the means in the hands of the offender, i.e., the type and degree of assistance that he/she, at the time and place of the incident, is capable of giving; and (b) requires adequate proof. X was able to supply the help according to the extent of capabilities (*Gonzaga v. People*, G.R. No. 195671, January 21, 2015).

Q: While X was driving his car, he noticed that something was wrong in the accelerator. He drove his car under the house of A which is made of light materials. Upon opening the hood of his car, he smelled gasoline from under the car. He lighted his lighter to see what was wrong. All of a sudden the car was set aflame. The fire spread to the house of A. To save himself, A jumped from the window and suffered serious physical injuries. B, wife of A, failed to get out of the house and was burnt to

death. C, the son of A and B suffered slight physical injuries when he got out of the house. The motorcycle of C was destroyed. What crime did X commit?

A: X committed **Reckless Imprudence resulting to Homicide (for the death of B), Arson (for the burning of the house), Serious Physical Injuries (for the injuries sustained by A), and Damage to property (for the destruction of motorcycle of C).** There is only one criminal information to be filed because grave or less grave felonies resulted from single act of imprudence. When X lighted his lighter despite smelling gasoline, he omitted that degree of care or caution to prevent injury or damage to another. The several crimes must be included in one information for Reckless Imprudence. However, with respect to the slight physical injuries sustained by C, resulting from the single act of imprudence does not constitute a complex crime. Another information for Reckless Imprudence resulting in Slight Physical Injuries must be filed against X (*Reodica v. Court of Appeals*, July 1998, 292 SCRA 87).

NOTE: Light felonies cannot be complexed with grave and less grave felonies

SPECIAL PENAL LAWS

ANTI-ARSON LAW PD 1613

Simple arson is governed by PD 1613, while destructive arson is governed by Article 320 of the Revised Penal Code.

PUNISHABLE ACTS

Punishable acts under PD 1613

1. Burning or setting fire to the property of another; and
2. Setting fire to his own property under circumstances which expose to danger the life or property of another (*Sec. 1, PD 1613*).

Simple arson (BAR 2015)

When the property burned is:

1. Any building used as offices of the government or any of its agencies;
2. Any inhabited house or dwelling;
3. Any industrial establishment, shipyard, oil well or mine shaft, platform or tunnel;
4. Any plantation, farm, pastureland, growing crop, grain field, orchard, bamboo grove or forest;
5. Any rice mill, sugar mill, cane mill or mill central; or
6. Any railway or bus station, airport, wharf or warehouse (*Sec. 3, PD 1613*).

Special aggravating circumstances under PD 1613

1. If committed with intent to gain.
2. If committed for the benefit of another.
3. If the offender is motivated by spite or hatred towards the owner or occupant of the property burned.
4. If committed by a syndicate.

NOTE: If the foregoing circumstance(s) are present, the penalty shall be imposed in its maximum period (*Sec. 4, PD 1613*).

Q: Nestor had an argument with his live-in partner, Honey, concerning their son. During their heated discussion, Nestor intimated to Honey his desire to have sex with her, but the same was thwarted. Frustrated and incensed,

Nestor set fire on both the plastic partition of the room and Honey's clothes in the cabinet. After realizing what he did, Nestor attempted to put out the flames, but it was too late. This resulted in the burning of their home and the neighboring houses. Nestor was forthwith convicted of destructive arson. Was Nestor's conviction for the crime of destructive arson proper?

A: **NO**, the crime committed by Nestor is simple arson penalized under *Sec. 3, Par. 2 of PD 1613* as the properties burned by him are specifically described as houses, contemplating inhabited houses or dwellings under the aforesaid law. Simple Arson contemplates crimes with less significant social, economic, political and national security implications than Destructive Arson. Destructive arson under Article 320 of the RPC, on the other hand, contemplates the burning of buildings and edifices (*People v. Soriano, G.R. No. 142565, July 29, 2003*).

Circumstances which shall constitute as prima facie evidence of arson

1. If the fire started simultaneously in more than one part of the building or establishment.
2. If substantial amount of flammable substances or materials are stored within the building not of the offender nor for household use.
3. If gasoline, kerosene, or other flammable or combustible substances or materials soaked therewith or containers thereof, or any mechanical, electrical, chemical or electronic contrivance designed to start a fire or ashes or traces of any of the foregoing are found in the ruins or premises of the burned building or property.
4. If the building or property is insured for substantially more than its actual value at the time of the issuance of the policy.
5. If during the lifetime of the corresponding fire insurance policy, more than two fires have occurred in the same or other premises owned or under the control of the offender and/or insured.
6. If shortly before the fire, a substantial portion of the effects insured and stored in a building or property had been withdrawn from the premises except in the ordinary course of business.
7. If a demand for money or other valuable consideration was made before the fire in exchange for the desistance of the offender or for the safety of the person or property of the victim (*Sec. 6, PD 1613*).

Q: What crime was perpetrated in cases where both burning and death occur?

A: It depends. In order to determine the crime committed, the main objective of the malefactor must be ascertained: (a) if the main objective is the burning of the building or edifice, but death results by reason or on the occasion of arson, the crime is **simply arson**, and the resulting homicide is absorbed; (b) if, on the other hand, the main objective is to kill a particular person who may be in a building or edifice, when fire is resorted to as the means to accomplish such goal the crime committed is **murder** only; lastly, (c) if the objective is, likewise, to kill a particular person, and in fact the offender has already done so, but fire is resorted to as a means to cover up the killing, then there are two separate and distinct crimes committed – **homicide/murder and arson**. (*People v. Malngan*, G.R. No. 170470, September 26, 2006).

CONFISCATION OF OBJECT OF ARSON IN FAVOR OF THE STATE

GR: The building which is the object of arson, including the land on which it is situated, shall be confiscated and escheated to the State.

XPN: The owner can prove that he has no participation in nor knowledge of such arson despite the exercise of due diligence on his part (*Sec.8, PD 1613*).

ANTI-CARNAPPING LAW RA 10883

NOTE: The old Anti-Carnapping law, RA 6539, as amended by RA 7659, has been superseded by RA 10883, otherwise known as the “New Anti-Carnapping Act of 2016.”

Carnapping (BAR 1993, 2008)

Carnapping is the taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of persons, or by using force upon things (*Sec. 3, RA 10883*).

PUNISHABLE ACTS

1. Carnapping (*Sec. 3, RA 10883*)
2. Concealment of Carnapping (*Sec. 4, RA 10883*)

3. Defacing or Tampering with Serial Numbers of Motor Vehicle Engines, Engine Blocks and Chassis (*Sec 14, RA 10883*)
4. Identity Transfer (*Sec 15, RA 10883*)
5. Transfer of Vehicle Plate without Securing the Proper Authority from the Land Transportation Office (LTO) (*Sec 16, RA 10883*)
6. Sale of Second Hand Spare Parts Taken from a Carnapped Vehicle (*Sec 17, RA 10883*)

Motor vehicle

“Motor vehicle” is any vehicle propelled by any power other than muscular power using the public highways, except road rollers, trolley cars, street-sweepers, sprinklers, lawn mowers, bulldozers, graders, fork-lifts, amphibian trucks, and cranes if not used on public highways, vehicles, which run only on rails or tracks, and tractors, trailers and traction engines of all kinds used exclusively for agricultural purposes. Trailers having any number of wheels, when propelled or intended to be propelled by attachment to a motor vehicle, shall be classified as separate motor vehicle with no power rating (*Sec. 2(e), RA 10883*).

Defacing or tampering with a serial number

“Defacing or tampering with a serial number” is the altering, changing, erasing, replacing, or scratching of the original factory-inscribed serial number on the motor vehicle engine, engine block or chassis of any motor vehicle. Whenever any motor vehicle is found to have a serial number on its motor engine, engine block or chassis which is different from that which is listed in the records of the Bureau of Customs for motor vehicles imported into the Philippines, that motor vehicle shall be considered to have a defaced or tampered with serial number (*Sec. 2(b), RA 10883*).

Repainting

“Repainting” is changing the color of a motor vehicle by means of painting. There is repainting whenever the new color of a motor vehicle is different from its color as registered in the Land Transportation Office (*Sec. 2(g), RA 10883*).

Body building

“Body-building” is a job undertaken on a motor vehicle in order to replace its entire body with a new body (*Sec. 2(a), RA 10883*).

Remodeling

"Remodeling" is the introduction of some changes in the shape or form of the body of the motor vehicle (Sec. 2(h), RA 10883).

Dismantling

"Dismantling" is the tearing apart, piece by piece or part by part, of a motor vehicle (Sec. 2 (c), RA 10883).

Overhauling

"Overhauling" is the cleaning or repairing of the whole engine of a motor vehicle by separating the motor engine and its parts from the body of the motor vehicle (Sec. 2(f), RA 10883).

When is carnapping committed?

It can be committed in two ways:

1. When carnapping is committed WITH violence against or intimidation of persons, or force upon things.

Illustration: Pedro is about to leave from UST. Upon boarding his car, he was poked by X with a gun. X subsequently, took Pedro's car.

2. When carnapping is committed WITHOUT violence against or intimidation of persons, or force upon things.

Illustration: Pedro, a law student parked his car somewhere. While attending his Criminal 2 class, Pedro's car was taken.

NOTE: In either case, the taking is always unlawful from the beginning.

Even if the car was taken by means of violence or intimidation the crime is carnapping (RA 6539) and not robbery (*People v. Bustinera*, G.R. No. 148233, June 8, 2004).

Q: Pedro was hired as a taxi driver under the boundary system. One day, Pedro failed to return the taxi since he was short of the boundary fee. Is Pedro liable for carnapping?

A: YES. While the nature of Pedro's possession of the taxi was initially lawful as he was hired as a taxi driver and was entrusted possession thereof, his act of not returning it to its owner transformed the character of the possession into an unlawful

one. (*People v. Bustinera*, G.R. No. 148233, June 8, 2004).

NOTE: Qualified theft of a motor vehicle is the crime if only the material or physical possession was yielded to the offender; otherwise, if juridical possession was also yielded, the crime is *estafa*.

Elements of carnapping

1. That there is an actual taking of the vehicle;
2. That the vehicle belongs to a person other than the offender himself;
3. That the taking is without the consent of the owner thereof; or that the taking was committed by means of violence against or intimidation of persons, or by using force upon things; and
4. That the offender intends to gain from the taking of the vehicle (*People v. Lagat*, G.R. No. 187044, September 14, 2011).

Unlawful taking

In *People v. Bustinera*, this Court defined unlawful taking, or *apoderamiento*, as the taking of the motor vehicle without the consent of the owner, or by means of violence against or intimidation of persons, or by using force upon things; it is deemed complete from the moment the offender gains possession of the thing, even if he has no opportunity to dispose of the same (*People v. Lagat*, G.R. No. 187044, September 14, 2011).

Presumption of unlawfully taking of the motor vehicle

In *Litton Mills, Inc. v. Sales*, we said that for such presumption to arise, it must be proven that: (a) the property was stolen; (b) it was committed recently; (c) that the stolen property was found in the possession of the accused; and (d) the accused is unable to explain his possession satisfactorily (*People v. Lagat*, G.R. No. 187044, September 14, 2011).

Intent to gain

In *Bustinera*, we elucidated that intent to gain or *animus lucrandi* is an internal act, presumed from the unlawful taking of the motor vehicle. Actual gain is irrelevant as the important consideration is the intent to gain. The term "gain" is not merely limited to pecuniary benefit but also includes the benefit which in any other sense may be derived or expected from the act which is performed. Thus, the mere use of the thing which was taken without the owner's consent

constitutes gain (*People v. Lagat, G.R. No. 187044, September 14, 2011*).

REGISTRATION

Requirement of registration

1. *Registration of motor vehicle engine, engine block and chassis*

NOTE: Within one (1) year after the approval of this Act, every owner or possessor of unregistered motor vehicle or parts thereof in knock down condition shall register with the Land Transportation Office the following:

1. Motor vehicle engine
 2. Engine block
 3. Chassis
2. *Registration of sale, transfer, conveyance, substitution or replacement of a motor vehicle engine, engine block or chassis.*

NOTE: Within twenty (20) working days upon purchase/acquisition of a motor vehicle and substitution or replacement of a motor vehicle engine, engine block or chassis, every sale, transfer, conveyance of a motor vehicle, substitution or replacement of a motor vehicle engine, engine block or chassis of a motor vehicle shall be registered with the LTO.

Effect if the motor vehicle engines, engine blocks and chassis are not registered

It shall be considered as:

1. Untaxed importation
2. Coming from an illegal source
3. Carnapped

It shall be confiscated in favor of the Government.

Duty of collector of customs

The Collector of Customs of a principal port of entry where an imported motor vehicle, motor vehicle engine, engine block chassis or body is unloaded, shall, within seven (7) days after the arrival of the imported motor vehicle or any of its parts enumerated herein, report the shipment to the Land Transportation Office, specifying the make, type and serial numbers, if any, of the motor vehicle engine, engine block and chassis or body, and stating the names and addresses of the owner or consignee thereof.

If the motor vehicle engine, engine block, chassis or body does not bear any serial number, the

Collector of Customs concerned shall hold the motor vehicle engine, engine block, chassis or body until it is numbered by the Land Transportation Office; Provided, that a PNP clearance shall be required prior to engraving the engine or chassis number (*Sec 9, RA 10883*).

Duty of importers, distributors and sellers

Any person engaged in the importation, distribution, and buying and selling of motor vehicles, motor vehicle engines, engine blocks, chassis or body, shall:

1. Keep a permanent record of his stocks, stating therein:
 - a. Their type, make and serial numbers; and
 - b. The names and addresses of the persons from whom they were acquired; and
 - c. The names and addresses of the persons to whom they were sold
2. Render an accurate monthly report of his transactions in motor vehicles to the Land Transportation Office (*Sec 10, RA 10883*).

Requirement of clearance and permit

1. *For assembly or rebuilding of motor vehicles.* - Any person who shall undertake to assemble or rebuild or cause the assembly or rebuilding of a motor vehicle shall first secure a certificate of clearance from the Philippine National Police (PNP).

NOTE: No such permit shall be issued unless the applicant shall present a statement under oath containing the type, make and serial numbers of the engine, chassis and body, if any, and the complete list of the spare parts of the motor vehicle to be assembled or rebuilt together with the names and addresses of the sources thereof.

In the case of motor vehicle engines to be mounted on motor boats, motor bancas and other light water vessels, the applicant shall secure a permit from the Philippine National Police, which office shall in turn furnish the Office the pertinent data concerning the motor vehicle engines including their type, make and serial numbers (*Sec 12, RA 10883*).

2. *For shipment of motor vehicles, motor vehicle engines, engine blocks, chassis or body.* - Any person who shall undertake to ship motor vehicles, motor vehicle engines, engine blocks, chassis or body shall first secure a certificate

of clearance from the Philippine National Police.

NOTE: The PPA shall not allow the loading of motor vehicles in all interisland and international shipping vessels without a motor vehicle clearance from the PNP, except cargo trucks and other trucks carrying goods. Land Transportation Franchising and Regulatory Board (LTFRB)-accredited public utility vehicles (PUV) and other motor vehicles carrying foodstuff and dry goods.

The Philippine Ports Authority shall, within seven (7) days upon boarding, submit a report to the Philippine National Police of all motor vehicles loaded on board the "RORO", ferry, boat, vessel or ship for interisland and international shipment (*Sec 13, RA 10883*).

Convicted foreign nationals deported after service of sentence

Foreign nationals convicted under this Act shall be deported immediately after service of sentence without further proceedings by the Bureau of Immigration (*Sec. 18, RA 10883*).

ANTI-CHILD ABUSE LAW RA 7610, AS AMENDED

Children as understood under RA 7610

Children refer to:

- a. Persons below eighteen (18) years of age; or
- b. Those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition (*Sec. 3(a), RA 7610*).

Child abuse (BAR 2004)

Child abuse refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

1. Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment; (**BAR 2002, 2005**)
2. Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;
3. Unreasonable deprivation of his basic needs for survival, such as food and shelter; or

4. Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death (*Sec. 3(b), RA 7610*). (**BAR 2002**)

Q: When Garingarao touched the breasts and private parts of the minor, AAA, is it correct to say that the accused should have been convicted only of acts of lasciviousness and not of violation of RA 7610 since the incident happened only once?

A: NO. The Court has already ruled that it is inconsequential that sexual abuse under RA 7610 occurred only once. Sec. 3(b) of RA 7610 provides that the abuse may be habitual or not. Hence, the fact that the offense occurred only once is enough to hold Garingarao liable for acts of lasciviousness under RA 7610 (*Garingarao v. People, G.R. No. 192760, July 20, 2011*).

PUNISHABLE ACTS

1. Child prostitution and other sexual abuse (*Sec. 5, RA 7610*);
2. Attempt to commit child prostitution (*Sec. 6, RA 7610*);
3. Child trafficking (*Sec. 7, RA 7610*);
4. Attempt to commit child trafficking (*Sec. 8, RA 7610*);
5. Obscene publications and indecent shows (*Sec. 9, RA 7610*);
6. Other acts of neglect, abuse, cruelty or exploitation and other conditions prejudicial to the child's development (*Sec. 10, RA 7610*);
7. Establishments or enterprises promoting, facilitating, or conducting activities constituting child prostitution and other sexual abuse, child trafficking, obscene publications and indecent shows, and other acts of abuse (*Sec. 11, RA 7610*);
8. Employment of children (*Sec. 12, RA 7610*);
9. Discrimination of children of indigenous cultural communities (*Sec. 20, RA 7610*); and
10. Confidentiality (*Sec. 29, RA 7610*).

Child prostitution and other sexual abuse

Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse (*Sec. 5, RA 7610*).

NOTE: RA 7610 recognizes the existence of a male prostitute as a victim and not just an offender.

Persons liable for child prostitution and other sexual abuse

1. Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:
 - a. Acting as a procurer of a child prostitute;
 - b. Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;
 - c. Taking advantage of influence or relationship to procure a child as prostitute;
 - d. Threatening or using violence towards a child to engage him as a prostitute; or
 - e. Giving monetary consideration goods or other pecuniary benefit to a child with intent to engage such child in prostitution.
2. Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, that when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of the Revised Penal Code, for rape or lascivious conduct, as the case may be; and
3. Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment (*Sec. 5, RA 7610*).

Instances when there is an attempt to commit child prostitution

1. Any person who, not being a relative of a child, is found alone with the said child inside the room or cubicle of a house, an inn, hotel, motel, pension house, apartelle or other similar establishments, vessel, vehicle or any other hidden or secluded area under circumstances which would lead a reasonable person to believe that the child is about to be exploited in prostitution and other sexual abuse.
2. Any person is receiving services from a child in a sauna parlor or bath, massage clinic,

health club and other similar establishments (*Sec. 6, RA 7610*).

Persons liable for child trafficking

Any person who shall engage in trading and dealing with children including, but not limited to, the act of buying and selling of a child for money, or for any other consideration, or barter (*Sec. 7, RA 7610*).

Attempt to commit child trafficking

There is an attempt to commit child trafficking:

- a. When a child travels alone to a foreign country without valid reason therefor and without clearance issued by the Department of Social Welfare and Development or written permit or justification from the child's parents or legal guardian;
- b. When a person, agency, establishment or child-caring institution recruits women or couples to bear children for the purpose of child trafficking;
- c. When a doctor, hospital or clinic official or employee, nurse, midwife, local civil registrar or any other person simulates birth for the purpose of child trafficking; or
- d. When a person engages in the act of finding children among low-income families, hospitals, clinics, nurseries, day-care centers, or other child-caring institutions who can be offered for the purpose of child trafficking (*Sec. 8, RA 7610*).

Persons liable for obscene publications and indecent shows

Any person who shall hire, employ, use, persuade, induce or coerce a child to perform in obscene exhibitions and indecent shows, whether live or in video, or model in obscene publications or pornographic materials or to sell or distribute the said materials (*Sec. 9, RA 7610*).

Persons liable for other acts of neglect, abuse, cruelty or exploitation and other conditions prejudicial to the child's development

1. Any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development;

2. Any person who shall keep or have in his company a minor, twelve (12) years or under or who is ten (10) years or more his junior in any public or private place, hotel, motel, beer joint, discotheque, cabaret, pension house, sauna or massage parlor, beach and/or other tourist resort or similar places. Provided, that this provision shall not apply to any person who is related within the fourth degree of consanguinity or affinity or any bond recognized by law, local custom and tradition or acts in the performance of a social, moral or legal duty;
3. Any person who shall induce, deliver or offer a minor to any one prohibited by this Act to keep or have in his company a minor as provided in the preceding paragraph;
4. Any person, owner, manager or one entrusted with the operation of any public or private place of accommodation, whether for occupancy, food, drink or otherwise, including residential places, who allows any person to take along with him to such place or places any minor herein described; or
5. Any person who shall use, coerce, force or intimidate a street child or any other child to;
 - a. Beg or use begging as a means of living;
 - b. Act as conduit or middlemen in drug trafficking or pushing; or
 - c. Conduct any illegal activities (*Sec. 10, RA 7610*).

Sanctions of Establishments or Enterprises

All establishments and enterprises which promote or facilitate child prostitution and other sexual abuse, child trafficking, obscene publications and indecent shows, and other acts of abuse shall be immediately closed and their authority or license to operate cancelled, without prejudice to the owner or manager thereof being prosecuted under this Act and/or the Revised Penal Code, as amended, or special laws (*Sec. 11, RA 7610*).

NOTE: An establishment shall be deemed to promote or facilitate child prostitution and other sexual abuse, child trafficking, obscene publications and indecent shows, and other acts of abuse if the acts constituting the same occur in the premises of said establishment (*Sec. 11, RA 7610*).

Employment of Children

GR: No children below fifteen (15) years of age may be employed.

XPN:

1. When a child works directly under the sole responsibility of his parents or legal guardian

and where only members of the employer's family are employed: Provided, however, that his employment neither endangers his life, safety and health and morals, nor impairs his normal development: Provided, further, That the parent or legal guardian shall provide the said minor child with the prescribed primary and/or secondary education; or

2. When a child's employment or participation in public entertainment or information through cinema, theater, radio or television is essential: Provided, the employment contract concluded by the child's parent or guardian, with the express agreement of the child concerned, if possible, and the approval of the Department of Labor and Employment: Provided, that the following requirements in all instances are strictly complied with:
 - a. The employer shall ensure the protection, health, safety and morals of the child;
 - b. The employer shall institute measures to prevent the child's exploitation or discrimination taking into account the system and level of remuneration, and the duration and arrangement of working time; and;
 - c. The employer shall formulate and implement, subject to the approval and supervision of competent authorities, a continuing program for training and skill acquisition of the child (*Sec. 12, RA 7610*).

NOTE: In the above exceptional cases where any such child may be employed, the employer shall first secure, before engaging such child, a work permit from the Department of Labor and Employment which shall ensure observance of the above requirement (*Sec. 12, RA 7610*).

Prohibition on the Employment of Children in Certain Advertisements

No person shall employ child models in all commercials or advertisements promoting alcoholic beverages, intoxicating drinks, tobacco and its byproducts and violence (*Sec. 14, RA 7610*).

Discrimination of children of indigenous cultural communities

Children of indigenous cultural communities shall not be subjected to any and all forms of discrimination (*Sec. 20, RA 7610*).

Who may file a complaint?

- a. Offended party;
- b. Parents or guardians;

- c. Ascendant or collateral relative within the third degree of consanguinity;
- d. Officer, social worker or representative of a licensed child-caring institution;
- e. Officer or social worker of the Department of Social Welfare and Development;
- f. Barangay chairman; or
- g. At least three (3) concerned responsible citizens where the violation occurred.

“Comprehensive program against child abuse, exploitation and discrimination”

This refers to the coordinated program of services and facilities to protect children against:

1. Child Prostitution and other sexual abuse;
2. Child trafficking;
3. Obscene publications and indecent shows;
4. Other acts of abuses; and
5. circumstances which threaten or endanger the survival and normal development of children (*Sec. 3(d), RA 7610*).

**ANTI-CHILD PORNOGRAPHY LAW
RA 9775**

Child as contemplated under RA 9775

“Child” refers to a person:

- a. BELOW 18 years of age; or
- b. OVER 18 years of age but is unable to fully take care of himself/herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition (*Sec. 3(a) Par. 1, RA 9775*).

A *child* shall also refer to:

1. A person, regardless of age, who is presented, depicted or portrayed as a child as defined herein
2. Computer-generated, digitally or manually crafted images or graphics of a person who is represented or who is made to appear to be a child as defined herein (*Sec. 3(a), Par. 2, RA 9775*).

Child pornography

“Child pornography” refers to any representation, whether visual, audio, or written combination thereof, by electronic, mechanical, digital, optical, magnetic or by any other means, of a child engaged or involved in real or simulated explicit sexual activities (*Sec. 3(b), RA 9775*).

Explicit sexual activity

“Explicit sexual activity” includes actual or simulated:

1. Sexual intercourse or lascivious act including, but not limited to, contact involving genital to genital, oral to genital, anal to genital, or oral to anal, whether between persons of the same or opposite sex;
2. Bestiality;
3. Masturbation;
4. Sadistic or masochistic abuse;
5. Lascivious exhibition of the genitals, buttocks, breast, pubic area and/or anus; or
6. Use of any object or instrument for lascivious acts (*Sec. 3(c), RA 9775*).

Primarily sexual purposes

“Primarily sexual purposes” refer to purposes which will fulfill all the following conditions:

1. The average person applying contemporary community standards would find the work taken as a whole appealing to prurient interest and satisfying only the market for gratuitous sex and violence;
2. The work depicts or describes sexual conduct in a patently offensive way; and
3. The work taken as a whole imbued within its context, manner or presentation, intention and culture, lascivious, literary, artistic, political and scientific value (*Sec. 3(k), RA 9775*).

Child pornography materials

“Child pornography materials” refer to the means and methods by which child pornography is carried out:

1. As to form

- a. **Visual depiction** - which includes not only images of real children but also digital image, computer image or computer-generated image that is indistinguishable from that of real children engaging in an explicit sexual activity. Visual depiction shall include:
 - i. Undeveloped film and videotapes
 - ii. Data and/or images stored on a computer disk or by electronic means capable of conversion into a visual image
 - iii. Photograph, film, video, picture, digital image or picture, computer image or picture, whether made or

- produced by electronic, mechanical or other means
- iv. Drawings, cartoons, sculptures or paintings depicting children
- v. Other analogous visual depiction

- b. **Audio representation** of a person who is or is represented as being a child and who is engaged in or is represented as being engaged in explicit sexual activity, or an audio representation that advocates, encourages or counsels any sexual activity with children which is an offense under this Act.

NOTE: Such representation includes audio recordings and live audio transmission conveyed through whatever medium including real-time internet communications.

- c. **Written text or material** that advocates or counsels' explicit sexual activity with a child and whose dominant characteristic is the description, for a sexual purpose, of an explicit sexual activity with a child (*Sec. 3(c)(1), RA 9775*).

- 2. **As to content** – It includes representation of a person who is, appears to be, or is represented as being a child, the dominant characteristic of which is the depiction, for a sexual purpose, of the:
 - a. Sexual organ or the anal region, or a representation thereof; or
 - b. Breasts, or a representation of the breasts, of a female person (*Sec. 3(c)(2), RA 9775*).

Grooming

“Grooming” refers to the act of preparing a child or someone who the offender believes to be a child for sexual activity or sexual relationship by communicating any form of child pornography (*Sec. 3(h), RA 9775*).

Grooming includes online enticement or enticement through any other means.

Luring

“Luring” refers to the act of communicating, by means of a computer system, with a child or someone who the offender believes to be a child for the purpose of facilitating the commission of sexual activity or production of any form of child pornography (*Sec. 3(i), RA 9775*).

Pandering

“Pandering” is the act of offering, advertising, promoting, representing, or distributing through any means any material or purported material that is intended to cause another to believe that the material or purported material contains any form of child pornography, regardless of the actual content of the material or purported material (*Sec. 3(j), RA 9775*).

PUNISHABLE ACTS

1. To hire, employ, use, persuade, induce or coerce a child to perform in the creation or production of any form of child pornography;
2. To produce, direct, manufacture or create any form of child pornography;
3. To publish offer, transmit, sell, distribute, broadcast, advertise, promote, export or import any form of child pornography;
4. To possess any form of child pornography with the intent to sell, distribute, publish, or broadcast;

NOTE: Possession of three (3) or more articles of child pornography of the same form shall be *prima facie* evidence of the intent to sell, distribute, publish or broadcast.

5. To knowingly, willfully and intentionally provide a venue for the commission of prohibited acts as, but not limited to, dens, private rooms, cubicles, cinemas, houses or in establishments purporting to be a legitimate business;
6. For film distributors, theaters and telecommunication companies, by themselves or in cooperation with other entities, to distribute any form of child pornography;
7. For a parent, legal guardian or person having custody or control of a child to knowingly permit the child to engage, participate or assist in any form of child pornography;
8. To engage in the luring or grooming of a child;
9. To engage in pandering of any form of child pornography;
10. To willfully access any form of child pornography;
11. To conspire to commit any of the prohibited acts stated in Sec. 4;

NOTE: Conspiracy to commit any form of child pornography shall be committed when two (2) or more persons come to an agreement concerning the commission of any

of the said prohibited acts and decide to commit it.

12. To possess any form of child pornography (*Sec. 4, RA 9775*);

13. Syndicated child pornography (*Sec. 5, RA 9775*);

NOTE: Syndicated child pornography is committed when it is carried out by a group of three (3) or more persons conspiring or confederating with one another (*Sec. 5, RA 9775*).

14. Willfully and knowingly failing to comply with the notice and installation requirements of an internet service provider (*Sec. 9, RA 9775*);

15. Willfully and knowingly failing to comply with the notice requirements by any mall owner-operator and owner or lessor of other business establishments (*Sec. 10, RA 9775*);

16. Knowingly, willfully and intentionally violating duties of an internet content host (*Sec. 11, RA 9775*); and

17. Violation of the right to privacy of the child at any stage of the investigation, prosecution and trial of an offense under this Act (*Sec. 13, RA 9775*).

Child Pornography as a Transnational Crime

The Department of Justice may execute the request of a foreign state for assistance in the investigation or prosecution of any form of child pornography by:

1. Conducting a preliminary investigation against the offender and, if appropriate, to file the necessary charges in court;
2. Giving information needed by the foreign state; and
3. Applying for an order of forfeiture of any proceeds or monetary instrument or property located in the Philippines used in connection with child pornography in the court (*Sec. 22, RA 9775*).

NOTE: The principles of mutuality and reciprocity shall be at all times recognized (*Sec. 22, RA 9775*).

ANTI-FENCING LAW PD 1612

Fencing (BAR 2013, 2014)

"Fencing" is the act of any person who, with intent to gain for himself or for another, shall buy,

receive, possess, keep, acquire, conceal, sell or dispose of, or shall buy and sell, or in any other manner deal in any article, item, object or anything of value which he knows, or should be known to him, to have been derived from the proceeds of the crime of robbery or theft (*Sec. 2(a), PD 1612*).

NOTE: To be liable for fencing, the offender buys or otherwise acquires and then sells or disposes of any object of value which he knows or should be known to him to have been derived from the proceeds of the crime of robbery or theft (*Caoili v. CA, G.R. No. 128369, December 22, 1997*).

Nature of the crime of fencing

Fencing is a crime involving moral turpitude. Actual knowledge of the fact that the property received is stolen displays the same degree of malicious deprivation of one's rightful property as that which animated the robbery or theft which by their very nature, are crimes of moral turpitude (*Dela Torre v. COMELEC, G.R. No. 121592, July 5, 1996*).

Fence

A fence includes any person, firm, association, corporation or partnership or other organization who/which commits the act of fencing (*Sec. 2(b), PD 1612*).

Officers of juridical persons are liable under this law

If the fence is a partnership, firm, corporation or association, the president or the manager or any of any officers thereof who knows or should have known the commission of the offense shall be liable (*Sec. 4, PD 1612*).

Elements

1. A robbery or theft has been committed; (**BAR 1990, 1992, 1995, 2009, 2010**)
2. The accused, who took no part in the robbery or theft, "buys, receives, possesses, keeps, acquires, conceals, sells or disposes, or buys and sells, or in any manner deals in any article or object taken" during that robbery or theft;
3. The accused knows or should have known that the thing is derived from that crime; and (**BAR 1998**)
4. He intends by the deal he makes to gain for himself or for another (*Dimat v. People, G.R. No. 181184, January 25, 2012*).



Fencing under PD 1612 is a distinct crime from theft and robbery.

Fencing vis-à-vis Robbery and Theft

The law on fencing does not require the accused to have participated in the criminal design to commit, or to have been in any wise involved in the commission of, the crime of robbery or theft. Neither is the crime of robbery or theft made to depend on an act of fencing in order that it can be consummated (*People v. Hon. De Guzman, G.R. No. 77368, October 5, 1993*).

Fencing is not a continuing offense

Fencing is not a continuing offense. Jurisdiction is with the court of the place where the personal property subject of the robbery or theft was possessed, bought, kept, or dealt with. The place where the theft or robbery was committed is inconsequential (*People v. Hon. De Guzman, G.R. No. 77368, October 5, 1993*).

Required proof in the prosecution of anti-fencing law

Presidential Decree 1612 is a special law and, therefore, its violation is regarded as *malum prohibitum*, requiring no proof of criminal intent. The prosecution must prove that the offender knew or should have known that the subject of the offense he acquired and later sold was derived from theft or robbery and that he intended to obtain some gain out of his acts (*Dimat v. People, ibid.*).

Presumption of Fencing

Mere possession of any good, article, item, object, or anything of value which has been the subject of robbery or thievery shall be *prima facie* evidence of fencing.

NOTE: The presumption does not offend the presumption of innocence enshrined in the fundamental law. It only shifted the burden of evidence to the defense. Burden of proof is upon the fence to overcome the presumption.

Clearance/Permit to Sell/Use Second Hand Articles

All stores, establishments or entities dealing in the buy and sell of any good, article item, object or anything of value obtained from an unlicensed dealer or supplier thereof, shall before offering the same for sale to the public, secure the necessary

clearance or permit from the station commander of the Integrated National Police in the town or city where such store, establishment or entity is located. The Chief of Constabulary/Director General, Integrated National Police shall promulgate such rules and regulations to carry out the provisions of this section. Any person who fails to secure the clearance or permit required by this section or who violates any of the provisions of the rules and regulations promulgated thereunder shall upon conviction be punished as a fence (*Sec. 6, PD 1612*).

Q: Arlene is engaged in the buy and sell of used garments, more popularly known as "ukay-ukay." Among the items found by the police in a raid of her store in Baguio City were brand-new Louis Feraud blazers. Arlene was charged with "fencing." Will the charge prosper? Why or why not? (BAR 2010)

A: No, the charge of "fencing" will not prosper. For a charge of fencing to prosper, it must first be established that the article subject of the alleged "fencing" has been derived from the proceeds of the crime of theft or robbery—a fact which is wanting in this case.

It should be noted that the suspect is engaged in the buy and sell of used garments, which are in the nature of personal property. In civil law, possession of personal or movable property carries with it a *prima facie* presumption of ownership. The presumption of "fencing" arises only when the article or item involved is the subject of a robbery or thievery (*Sec. 5, PD 1612*).

ANTI-GRAFT AND CORRUPT PRACTICES ACT RA 3019, AS AMENDED

Persons covered under this act (BAR 2000)

All public officers which include elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service, receiving compensation, even nominal from the government (*Sec. 2(b), RA 3019*).

Government includes:

1. National government
2. Local government
3. GOCCs
4. Other instrumentalities or agencies
5. Their branches (*Sec. 2(a), RA 3019*).



PUNISHABLE ACTS

1. a. Persuading, inducing, or influencing another public officer to:
 - i. Perform an act constituting a violation of the Rules and Regulations duly promulgated by competent authority, or
 - ii. An offense in connection with the official duties of the latter.
- b. Allowing himself to be persuaded, induced or influenced to commit such violation or offense (*Sec 3 (a), RA 3019*).

2. Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law (*Sec. 3 (b), RA 3019*). **(BAR 2010)**

Elements:

- a. The offender is a public officer;
 - b. He requested and/or received, directly or indirectly, a gift, present or consideration;
 - c. The gift, present or consideration was for the benefit of the said public officer or for any other person;
 - d. It was requested and/or received in connection with a contract or transaction with the Government; and
 - e. The public officer has the right to intervene in such contract or transaction in his official capacity.
3. Directly or indirectly requesting or receiving any gift, present or other pecuniary or material benefit, for himself or for another, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any Government permit or license, in consideration for the help given or to be given (*Sec. 3 (c), RA 3019*).

NOTE: This is a special form of bribery.

4. Accepting or having any member of his family accept employment in a private enterprise which has pending official business with him during the pendency thereof or within one year after its termination (*Sec. 3 (d), RA 3019*).

Elements:

- a. The public officer accepted, or having any of his family member accept any employment in a private enterprise;
 - b. Such private enterprise has a pending official business with the public officer; and
 - c. It was accepted during:
 - i. The pendency thereof; or
 - ii. Within 1 year after its termination.
5. Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence (*Sec. 3 (e), RA 3019*). **(BAR 1990, 1991, 1997, 2005, 2009)**

Elements:

- a. The accused must be a public officer discharging administrative, judicial or official functions;
- b. He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and
- c. That his action caused:
 - i. Any undue injury to any party, including the government; or
 - ii. Giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.

NOTE: Since bad faith is an element, good faith and lack of malice is a valid defense.

6. Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him (*Sec. 3 (f), RA 3019*).

Elements:

- a. Offender is a public officer;
- b. Public officer neglected or refused to act without sufficient justification after due demand or request has been made on him;
- c. Reasonable time has elapsed from such demand or request without the public officer having acted on the matter pending before him; and
- d. Such failure to act is for the purpose of:
 - i. Obtaining (directly or indirectly) from any person interested in the matter some pecuniary or material benefit or advantage;



- ii. Favoring his own interest; or
 - iii. Giving undue advantage in favor of; or
 - iv. Discriminating against any other interested party (*Coronado v. Sandiganbayan, G.R. No. 94955, August 18, 1993*).
7. Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby (*Sec. 3 (g), RA 3019*).

Elements:

- a. Accused is a public officer;
 - b. The public officer entered into a contract or transaction on behalf of the government; and
 - c. Such contract or transaction is grossly and manifestly disadvantageous to the government.
8. Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in which he:
- a. Intervenes or takes part in his official capacity; (Intervention must be actual and in the official capacity of the public officer), or
 - b. Is prohibited by the constitution or by law from having any interest (*Sec. 3(h), RA 3019*).
9. Directly or indirectly becoming interested, for personal gains, or having a material interest in any transaction or act which:
- a. Requires the approval of a board, panel or group of which he is a member and which exercises discretion in such approval; or
 - b. Even if he votes against the same or does not participate in the action of the board, committee, panel or group.

NOTE: Interest for personal gain shall be presumed against those public officials responsible for the approval of manifestly unlawful, inequitable, or irregular transaction or acts by the board, panel or group to which they belong (*Sec. 3 (i), RA 3019*).

10. Knowingly approving or granting any license, permit, privilege or benefit in favor of:
- a. Any person not qualified for or not legally entitled to such license, permit, privilege or benefit; or

- b. A mere representative or dummy of one who is not so qualified or entitled (*Sec. 3 (j), RA 3019*).

11. a. Divulging valuable information of a:
- i. Confidential character
 - ii. Acquired by his office or by him on account of his official position to unauthorized person
- b. Releasing such information in advance of its authorized release date (*Sec. 3 (k), RA 3019*).

The following persons shall also be punished with the public officer and shall be permanently or temporarily disqualified, in the discretion of the Court, from transacting business in any form with the Government:

- 1. Person giving the gift, present, share, percentage or benefit in par. 2 and 3.
- 2. Person offering or giving to the public officer the employment mentioned in par. 4.
- 3. Person urging the divulging or untimely release of the confidential information in par. 11.

Q: May a public officer charged under Section 3(b) of Republic Act No. 3019 ["directly or indirectly requesting or receiving any gift, present, share, percentage or benefit, for himself or for any other person, in connection with any contract or transaction between the government and any other party, wherein the public officer in his official capacity has to intervene under the law"] also be simultaneously or successively charged with direct bribery under Article 210 of the Revised Penal Code? Explain. (BAR 2010)

A: YES, a public officer charged under Sec. 3 (b) of R.A. 3019 may also be charged simultaneously or successively for the crime of direct bribery under Art. 210 of the Revised Penal Code because two crimes are essentially different and are penalized under distinct legal philosophies. Violation of Sec. (b) of R.A. 3019 is a *malum prohibitum*, the crime under Art. 210 of the Code is a *malum in se*.

Q: Differentiate Section 3(b) of Republic Act No. 3019 and Direct Bribery under Article 210 of the Revised Penal Code. Will there be double jeopardy if a person is charged simultaneously or successively for violation of Section 3 of RA 3019 and the Revised Penal Code?

A: The violation of Section 3(b) of RA 3019 is neither identical nor necessarily inclusive of direct bribery. While they have common elements, not all the essential elements of one offense are included among or form part of those enumerated in the other. Whereas the mere request or demand of a gift, present, share, percentage or benefit is enough to constitute a violation of Section 3(b) of RA 3019, acceptance of a promise or offer or receipt of a gift or present is required in direct bribery. Moreover, the ambit of Section 3(b) of RA 3019 is specific. It is limited only to contracts or transactions involving monetary consideration where the public officer has the authority to intervene under the law. Direct bribery, on the other hand, has a wider and more general scope: (a) performance of an act constituting a crime; (b) execution of an unjust act which does not constitute a crime and (c) agreeing to refrain or refraining from doing an act which is his official duty to do.

Although the two charges against petitioner stemmed from the same transaction, the same act gave rise to two separate and distinct offenses. No double jeopardy attached since there was a variance between the elements of the offenses charged. The constitutional protection against double jeopardy proceeds from a second prosecution for the same offense, not for a different one (*Merencillo v. People*, G.R. Nos. 142369-70, April 13, 2007).

Q: Mayor Adalim was charged with murder. He was transferred from the provincial jail and detained him at the residence of Ambil, Jr. Considering that Sec. 3(e) of RA No. 3019 punishes the giving by a public officer of unwarranted benefits to a private party, does the fact that a Mayor was the recipient of such benefits take petitioners' case beyond the ambit of said law?

A: NO. In drafting the Anti-Graft Law, the lawmakers opted to use "private party" rather than "private person" to describe the recipient of the unwarranted benefits, advantage or preference for a reason. A private person simply pertains to one who is not a public officer while a private party is more comprehensive in scope to mean either a private person or a public officer acting in a private capacity to protect his personal interest. When Mayor Adalim was transferred from the provincial jail and was detained at Ambil, Jr.'s residence, they accorded such privilege to Adalim, not in his official capacity as a mayor, but as a detainee charged with

murder. Thus, for purposes of applying the provisions of Section 3(e), RA No. 3019, Adalim was a private party (*Ambil Jr. v. People*, G.R. No. 175457, July 6, 2011).

NOTE: The requirement before a private person may be indicted for violation of Section 3 of RA 3019 is that such private person must be alleged to have acted in conspiracy with a public officer. The law, however, does not require that such person must, in all instances, be indicted together with the public officer. If circumstances exist where the public officer may no longer be charged in court, as in the present case where the public officer has already died, the private person may be indicted alone (*People v. Go*, G.R. No. 168539, March 25, 2014).

Manifest Partiality

Means that there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another (*Alvizo v. Sandiganbayan*, G.R. Nos. 98494-98692, July 17, 2003; *Webster*, *Third New International Dictionary*, p.1646; *Bouvier's Law Dictionary*, Third Edition, p. 2083).

Gross inexcusable negligence

Refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected (*Sistoza v. Desierto*, G.R. No. 144784, September 3, 2002).

Evident bad faith

Connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will (*Sistoza v. Desierto*, G.R. No. 144784, September 3, 2002). It also contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes Air (*France v. Carrascoso*, G.R. No. L-21438, September 28, 1966).

Undue injury

The term "undue injury" in the context of Sec. 3 (e) of the Anti-Graft and Corrupt Practices Act punishing the act of "causing undue injury to

any party,” has a meaning akin to that civil law concept of actual damage (*Guadines v. Sandiganbayan and People, G.R. No. 164891, June 6, 2011*).

Q: In violation of Sec. 3(e) of RA No. 3019, “causing any undue injury to any party, including the Government”; and “giving any private party any unwarranted benefits, must both circumstance be present to convict the accused of the said crime?

A: NO. The Supreme Court has clarified that the use of the disjunctive word “or” connotes that either act of (a) “causing any undue injury to any party, including the Government” and (b) “giving any private party any unwarranted benefits, advantage or preference,” qualifies as a violation of Sec. 3(e) of RA No. 3019, as amended. The use of the disjunctive “or” connotes that the two modes need not be present at the same time. In other words, the presence of one would suffice for conviction (*Alvarez v. People, G.R. No. 192591, June 29, 2011*).

Q: Is proof of the extent of damage necessary to prove the crime?

A: NO. The Supreme Court held in *Fonacier v. Sandiganbayan*, that proof of the extent or quantum of damage is not essential. It is sufficient that the injury suffered or benefits received can be perceived to be substantial enough and not merely negligible. Under the second mode of the crime defined in Section 3(e) of RA No. 3019 therefore, damage is not required. In order to be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another, in the exercise of his official, administrative or judicial functions (*Alvarez v. People, G.R. No. 192591, June 29, 2011*).

PROHIBITED ACTS FOR PRIVATE INDIVIDUALS

It shall be unlawful:

1. For any person having family or close personal relation with any public official to capitalize or exploit or take advantage of such family or personal relation by directly or indirectly requesting or receiving any present, gift, or material or pecuniary advantage from any person having some business, transaction, application, request or contract with the government, in which such public officer has to intervene (*Sec. 4, RA 3019*)

NOTE: *Family relations* include the spouse or relatives by consanguinity or affinity within third (3rd) civil degree.

Close Personal relations include close personal friendship, social and fraternal relations, and professional employment, all giving rise to intimacy which assures free access to such public officer.

2. For any person to knowingly induce or cause any public official to commit any of the offenses defined in Sec. 3.

Other prohibited acts for the relatives

GR: It shall be unlawful for the spouse or relative by consanguinity or affinity within the third civil degree of the President, Vice President, Senate President, or Speaker of the House to intervene, directly or indirectly, in any business, transaction, contract or application with the government.

XPN: This will not apply to:

1. Any person who, prior to the assumption of office of any of the above officials to whom he is related, has been already dealing with the Government along the same line of business;
2. Any transaction, contract or application already existing or pending at the time of such assumption of public office;
3. Any application filed by him the approval of which is not discretionary on the part of the official or officials concerned but depends upon compliance with requisites provided by law, or rules or regulations issued pursuant to law; or
4. Any act lawfully performed in an official capacity or in the exercise of a profession (*Sec. 5, RA 3019*).

EXCEPTIONS

1. Unsolicited gifts or presents of small or insignificant value offered or given as a mere ordinary token of gratitude or friendship according to local customs and usage; and
2. Practice of any profession, lawful trade or occupation by any private persons or by any public officer who under the law may legitimately practice his profession, trade or occupation during his incumbency except where the practice of such profession, trade or occupation involves conspiracy with any other person or public official to commit any violations of said Act (*Sec. 14, RA 3019*).

STATEMENT OF ASSETS AND LIABILITIES

Every public officer shall prepare and file with the office of the corresponding Department Head, or in the case of a Head of Department or chief of an independent office, with the Office of the President, or in the case of members of the Congress and the officials and employees thereof, with the Office of the Secretary of the corresponding House, a true detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year:

1. Within thirty days (30) after the approval of this Act or after assuming office; and
2. Within the month of January of every other year thereafter, as well as upon the expiration of his term of office, or upon his resignation or separation from office: Provided, that public officers assuming office less than two months before the end of the calendar year, may file their statements in the following months of January (*Sec. 7, RA 3019*).

DISMISSAL DUE TO UNEXPLAINED WEALTH

A public official has been found to have acquired during his incumbency, whether in his name or in the name of other persons, an amount of property and/or money manifestly out of proportion to his salary and to his other lawful income, that fact shall be a ground for dismissal or removal (*Sec. 8, RA 3019*).

Court of competent jurisdiction over offenses punishable under this act

It is the Sandiganbayan that has jurisdiction to try cases for violation of RA 3019 if the public officer is occupying a position corresponding to salary grade '27' or higher. Those that are classified as salary grade '26' or below may still fall within the jurisdiction of the Sandiganbayan, provided that they hold the positions enumerated by the law. Otherwise, jurisdiction shall be vested in the Regional Trial Court (*Sec. 4, PD No. 1606*).

Private Individuals are tried jointly with principals

In case private individuals are charged as co-principals, accomplices or accessories with the public officers or employees, including those

employed in government-owned or controlled corporations, they shall be tried jointly with said public officers and employees in the proper courts which shall exercise exclusive jurisdiction over them (*Sec. 4, RA 3019 as amended by RA 8249*).

Necessity of Preventive Suspension

It is mandatory for the court to place under preventive suspension a public officer accused before it. Imposition of suspension, however, is not automatic or self-operative. A pre-condition therefor is the existence of a valid information, determined at a pre-suspension hearing. Such a hearing is in accord with the spirit of the law, considering the serious and far-reaching consequences of a suspension of a public official even before his conviction, and the demands of public interest for a speedy determination of the issues involved in the case. Once a proper determination of the validity of the information has been made, it becomes the ministerial duty of the court to issue the order of preventive suspension. (*Segovia v. Sandiganbayan, G.R. No. 124067, March 27, 1998*).

No hard and fast rule exists in regulating conduct of pre-suspension hearing (*Luciano v. Mariano, G.R. No. L-32950, July 30, 1971*).

Q: What pre-conditions are necessary to be met or satisfied before preventive suspension may be ordered? (BAR 1999)

A: The pre-conditions necessary to be met or satisfied before a suspension may be ordered are: (1) there must be proper notice requiring the accused to show cause at a specific date of hearing why he should not be ordered suspended from office pursuant to R.A. 3019; and (2) there must be a determination of a valid information against the accused that warrants his suspension. However, no specific rules need be laid down for pre-suspension hearing. Suffice it to state that the accused should be given a fair and adequate opportunity to challenge the validity of the criminal proceedings against him (*Luciano v. Mariano, G.R. No. L-32950, July 30, 1971*).

Length of preventive suspension

Under Section 63 (b) of the Local Government Code, "any single preventive suspension of local elective officials shall not extend beyond sixty (60) days" (*Rios v. Sandiganbayan, G.R. No. 129913, September 26, 1997*).

Prescriptive Period

20 years (*Sec. 11, RA 3019 as amended by RA 10910*).

**ANTI-HAZING LAW
RA 8049**

Hazing

"Hazing" is an initiation rite or practice as a prerequisite for admission into membership in a fraternity, sorority or organization by placing the recruit, neophyte or applicant in some embarrassing or humiliating situations such as forcing him to do menial, silly, foolish and other similar tasks or activities or otherwise subjecting him to physical or psychological suffering or injury (*Sec. 1, RA 8049*).

ALLOWABLE INITIATION RITES

1. Those conducted by "organizations" which shall include any club or the AFP, PNP, PMA, or officer and cadet corp. of the Citizen's Military Training and CAT. The physical, mental and psychological testing and training procedure and practices to determine and enhance the physical, mental and psychological fitness of prospective regular members of the AFP and the PNP as approved by the Secretary of National Defense and the National Police Commission duly recommended by the Chief of Staff, AFP and the Director General of the PNP.
2. Those conducted by any fraternity, sorority or organization; Provided, that:
 - a. Written notice must be given to the school authorities or head of organization seven (7) days prior to the conduct of initiation.
 - b. The written notice must indicate:
 - i. That the period of initiation activities will not exceed three (3) days,
 - ii. The names of those to be subjected to such activities, and
 - iii. An undertaking that no physical violence be employed (*Sec. 2, RA 8049*).
 - c. Two (2) representatives of the school or organization must be assigned to be present during the initiation; they shall ensure that no physical harm will be inflicted (*Sec. 3, RA 8049*).

PERSONS LIABLE

1. The following are liable as **PRINCIPAL**:
 - a. The officers and members of the fraternity, sorority or organization who actually participated in the infliction of physical harm;
 - b. The parents of the officer or member of the fraternity, sorority or organization, when they have actual knowledge of the hazing conducted in their home but failed to take any action to prevent the same from occurring;
 - c. The officers, former officers or alumni of the organization, group, fraternity or sorority who actually planned the hazing although not present when the acts constituting hazing were committed; and
 - d. A fraternity or sorority's adviser who is present when the acts constituting the hazing were committed and failed to take action to prevent the same from occurring shall be liable as principal (*Sec. 4, RA 8049*).

NOTE: The presence of any person during the hazing is *prima facie* evidence of participation therein as principal, UNLESS he prevented the commission of the acts punishable therein.

2. The following are liable as **ACCOMPLICE**:
 - a. The owner of the place where the hazing is conducted, when he has actual knowledge of the hazing conducted therein but failed to take any action to prevent the same from occurring; and
 - b. The school authorities including faculty members who consent to the hazing or who have actual knowledge thereof, but failed to take any action to prevent the same from occurring (*Sec. 4, RA 8049*).

PUNISHABLE ACTS

1. Hazing or initiation rites in any form or manner by a fraternity, sorority or organization without prior written notice to the school authorities or head of organization 7 days before the conduct of such initiation; and
2. Infliction of any physical violence during initiation rites.

Instances when maximum penalty shall be imposed

1. When the recruitment is accompanied by force, violence, threat, intimidation or deceit on the person of the recruit who refuses to join;
2. When the recruit, neophyte or applicant initially consents to join but upon learning that hazing will be committed on his person, is prevented from quitting;
3. When the recruit, neophyte or applicant having undergone hazing is prevented from reporting the unlawful act to his parents or guardians, to the proper school authorities, or to the police authorities, through force, violence, threat or intimidation;
4. When the hazing is committed outside of the school or institution; or
5. When the victim is below 12 years of age at the time of the hazing (*Sec. 4, RA 8049*).

NOTE: Any person charged shall not be entitled to the mitigating circumstance that there was no intention to commit so grave a wrong (*Sec. 4, RA 8049*).

Q: The Information merely states that psychological pain and physical injuries were inflicted on the victim. Should the motion to quash the Information be granted?

A: YES. There is no allegation that the purported acts were employed as a prerequisite for admission or entry into the organization. Failure to aver this crucial ingredient would prevent the successful prosecution of the criminal responsibility of the accused, either as principal or as accomplice, for the crime of hazing (*People v. Bayabos, G.R. No. 171222, February 18, 2015*).

Imposition of administrative sanctions

The responsible officials of the school or of the police, military or citizen's army training organization, may impose the appropriate administrative sanctions on the person or the persons charged under this provision even before their conviction (*Sec. 4, RA 8049*).

ANTI-HIJACKING LAW RA 6235

PUNISHABLE ACTS

1. To compel a change in the course or destination of an aircraft of Philippine registry, or to seize or usurp the control

thereof, while it is in flight (*Sec. 1, RA 6235*).
(BAR 2013)

2. To compel an aircraft of foreign registry to land in Philippine territory or to seize or usurp the control thereof while it is within the said territory (*Sec. 1, RA 6235*).

Aggravating circumstances to nos. 1 and 2:

- a. When the offender has fired upon the pilot, member of the crew, or passenger of the aircraft;
 - b. When the offender has exploded or attempted to explode any bomb or explosive to destroy the aircraft; or
 - c. Whenever the crime is accompanied by murder, homicide, serious physical injuries or rape (*Sec. 2, RA 6235*).
3. To ship, load, or carry in any passenger aircraft operating as a public utility within the Philippines, any explosive, flammable, corrosive or poisonous substance or material (*Sec. 3, RA 6235*).
 4. By shipping, carrying or loading on board a cargo aircraft operating as a public utility in the Philippines materials or substances which are explosive, flammable, corrosive or poisonous in a manner not in accordance with the rules and regulations of the Civil Aviation Authority of the Philippines (*Sec. 4, RA 6235*).

Death or injury to persons or damage to property resulting from a violation of the 3rd and 4th acts

The person responsible therefor may be held liable in accordance with the applicable provisions of the Revised Penal Code (*Sec. 7, RA 6235*).

Necessary requisites before the Anti-Hijacking Law or RA 6235 may apply

- a. If it is a Philippine registered aircraft, it must be in flight even if not within the Philippine territory.
- b. If it is a foreign registered aircraft and the offender seizes or usurps the control thereof, it is required that the aircraft must be within Philippine territory.
- c. If the offender compels the foreign registered aircraft to land in any Philippine territory, the offender may also be held liable even if the aircraft is outside the Philippine territory.

NOTE: A crime committed while in a Philippine registered airship is an exception to the principle of territoriality under the RPC.

When an aircraft is considered in flight

An aircraft is in flight from the moment all its external doors are closed following embarkation until any of such doors is opened for disembarkation (*Sec. 1, RA 6235*).

Q: If the offender seized the control of a Philippine-registered aircraft but it is not in flight, will the Anti-Hijacking Law apply?

A: The Anti-Hijacking Law will not apply. Under Sec. 1 of RA 6235, "it shall be unlawful for any person to compel a change in the course or destination of an aircraft of Philippine registry, or to seize or usurp the control thereof, while it is in flight." Since the aircraft is not in flight, the law will not apply.

Q: The pilots of the ABC aircraft, which is an aircraft of foreign registry, were accosted by some armed men and were told to proceed to the aircraft to fly it to a foreign destination. The armed men walked with the pilots and went on board the aircraft. But before they could do anything on the aircraft, alert marshals arrested them. What crime was committed?

A: The Anti-Hijacking Law is applicable in this case. The requirement that the aircraft be in flight does not hold true when it comes to an aircraft of foreign registry. Under the law, simply usurping or seizing control of the aircraft is enough, provided that the aircraft is within Philippine territory. This is because aircrafts of foreign registry are considered in transit while they are in foreign countries (*Sec. 1, RA 6235*).

NOTE: The Anti-Hijacking Law is a special law where the attempted stage is not punishable.

Q: While the stewardess of a Philippine Air Lines plane bound for Cebu was waiting for the passenger manifest, two of the PAL passengers seated near the pilot surreptitiously entered the pilot cockpit. At gunpoint, they directed the pilot to fly the aircraft to the Middle East. However, before the pilot could fly the aircraft towards the Middle East, the offenders were subdued and the aircraft landed. What crime was committed?

A: Considering that the stewardess was still waiting for the passenger manifest, the doors were still open. The aircraft was not yet in flight. Hence, the Anti-Hijacking Law is not applicable. Instead, the Revised Penal Code shall govern. The crime committed was grave coercion as the pilot was ordered to immediately fly the aircraft by the use of threat.

Q: In the course of the hi-jack of an aircraft of Philippine registry in flight, a passenger or complement was shot and killed. What crime or crimes were committed?

A: The crime is a violation of the Anti Hi-Jacking Law. However, the penalty imposed shall be higher because the crime is accompanied by murder or homicide, a qualifying circumstance (*Sec. 2, RA 6235*).

Q: The hi-jackers of an aircraft of Philippine registry threatened to detonate a bomb in the course of the hi-jack. What crime or crimes were committed?

A: The crime is violation of the Anti Hi-Jacking Law. There is no separate and distinct crime of grave threat committed. This is considered as a qualifying circumstance that shall serve to increase the penalty (*Sec. 2, RA 6235*).

ANTI-PIRACY AND ANTI-HIGHWAY ROBBERY PD 532 (BAR 2001)

Vessel

Any vessel or watercraft used for transport of passengers and cargo from one place to another through Philippine waters. It shall include all kinds and types of vessels or boats used in fishing (*Sec. 2 (b), PD 532*).

Philippine waters

"Philippine waters" shall refer to all bodies of water, such as but not limited to seas, gulfs, bays around, between and connecting each of the Islands of the Philippine Archipelago, irrespective of its depth, breadth, length or dimension, and all other waters belonging to the Philippines by historic or legal title, including territorial sea, seabed, the insular shelves, and other submarine

areas over which the Philippines has sovereignty or jurisdiction (*Sec. 2 (a), PD 532*).

Philippine Highway

It shall refer to any road, street, passage, highway and bridges or other parts thereof, or railway or railroad within the Philippines used by persons, or vehicles, or locomotives or trains for the movement or circulation of persons or transportation of goods, articles, or property or both (*Sec. 2 (c), PD 532*).

NOTE: A river is considered part of Philippine waters (*People v. Dela Peña, G.R. No. 219581, January 31, 2018*).

PUNISHABLE ACTS

1. *Piracy* - Any attack upon or seizure of any vessel, or the taking away of the whole or part thereof or its cargo, equipment, or the personal belongings of its complement or passengers, irrespective of the value thereof, by means of violence against or intimidation of persons or force upon things committed by any person, *including* a passenger or member of the complement of said vessel, in Philippine waters (*Sec. 2 (d), PD 532*).
2. *Qualified Piracy*- When any of the following crimes is committed as a result or on the occasion of piracy:
 - a. Physical injuries or other crimes;
 - b. Rape, murder or homicide;
 - c. Offender abandoned the victims without means of saving themselves; or
 - d. When the seizure is accompanied by firing upon or boarding a vessel (*Sec. 3 (a), PD 532*).
3. *Highway robbery/brigandage* - The seizure of any person for ransom, extortion or other unlawful purposes, or the taking away of the property of another by means of violence against or intimidation of persons or force upon things or other unlawful means, committed by any person on any Philippine Highways (*Sec. 2 (e), PD 532*).
4. *Qualified Highway Robbery/Brigandage* - when any of the following crimes is committed as a result or on the occasion of Highway Robbery/Brigandage:
 - a. Physical injuries or other crimes; or
 - b. Kidnap for ransom, extortion, murder, homicide, or rape (*Sec. 3 (b), PD 532*).
5. *Aiding or protecting pirates or highway robbers/brigands* in any of the following

manner shall be considered **accomplice** of the principal offenders and be punished in accordance with the Rules prescribed by the RPC:

- a. Giving them information about the movement of the police or other peace officers of the government;
- b. Acquiring or receiving property taken by such pirates or brigands or in any manner derives any benefit therefrom; or
- c. Directly or indirectly abetting the commission of piracy or highway robbery or brigandage (*Sec. 4, PD 532*).

NOTE: It shall be presumed that any person who does any of the abovementioned acts has performed them knowingly unless the contrary is proven (*Sec. 4, PD 532*).

Elements of highway robbery under P.D. 532

1. That there is unlawful taking of property of another;
2. That said taking is with intent to gain;
3. That said taking is done with violence against or intimidation of persons or force upon things or other unlawful means; and
4. That it was committed on any Philippine highway.

NOTE: To sustain a conviction for highway robbery, the prosecution must prove that the accused were organized for the purpose of committing robbery indiscriminately. If the purpose is only a particular robbery, the crime is only robbery, or robbery in band if there are at least four armed men (*People v. Mendoza, G.R. No. 104461, February 23, 1996; Filoteo, Jr. v. Sandiganbayan, G.R. No. 79543, October 16, 1996*).

Piracy under PD 532, Piracy under Art. 122 and Robbery distinguished

UNDER PD 532	UNDER ART. 122	ROBBERY
Committed by strangers or by the members of the vessel's complement, or passengers of the vessel, in Philippine waters.	Committed by persons who are not members of the vessel's complement, nor by passengers of the vessel, in the high seas	Committed by the members of the vessel's complement or passengers of the vessel, in the high seas.



	or in Philippine waters.	
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**ANTI-PLUNDER ACT
RA 7080, AS AMENDED**

Public officers

Public officers mean any person holding any public office in the Government of the Republic of the Philippines by virtue of an appointment, election or contract (*Sec. 1 (a), RA 7080*).

“Government” under RA 7080

Government includes the National Government, and any of its subdivisions, agencies or instrumentalities, including government-owned or controlled corporations and their subsidiaries (*Sec. 1 (b), RA 7080*).

ILL-GOTTEN WEALTH

Ill-gotten wealth

It is any asset, property, business enterprise or material possession of any person, acquired by a public officer directly or indirectly through dummies, nominees, agents, subordinates and/or business associates (*Sec. 1 (d), RA 7080*).

Presumption under this law

When a public officer or employee acquires during his incumbency an amount of property which is manifestly out of proportion of his salary and to his other lawful income, such amount of property is then presumed prima facie to have been unlawfully acquired. Thus, if the public official is unable to show to the satisfaction of the court that he has lawfully acquired the property in question, then the court shall declare such property forfeited in favor of the State, and by virtue of such judgment, the property aforesaid shall become property forfeited in favor of the State (*Garcia v. Republic, G.R. No. 170122, October 12, 2009*).

PLUNDER

“Plunder” is a crime committed by a public officer by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other

persons, by amassing, accumulating or acquiring ill-gotten wealth through a combination or series of overt acts in the aggregate amount or total value of at least P50 million (*Sec. 2, RA 7080, as amended by RA 7659*). **(BAR 2014)**

There must be at least two (2) predicate crimes committed before one can be convicted of plunder.

Elements of Plunder

1. That the offender is a public officer who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates, or other persons;
2. That he amassed, accumulated or acquired ill-gotten wealth through a combination or series of the following overt or criminal acts:
 - a. through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;
 - b. by receiving, directly or indirectly, any commission, gift, share, percentage, kickback or any other form of pecuniary benefits from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;
 - c. by the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities of government-owned or -controlled corporations or their subsidiaries;
 - d. by obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;
 - e. by establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests;
 - f. by taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines; and
3. That the aggregate amount or total value of the

ill-gotten wealth amassed, accumulated or acquired is at least P50,000,000.00 (*Enrile v. People, G.R. 213455, August 11, 2015*).

NOTE: The corpus delicti of plunder is the amassment, accumulation or acquisition of ill-gotten wealth valued at not less than P50,000,000.00. The failure to establish the corpus delicti should lead to the dismissal of the criminal prosecution (*Macapagal-Arroyo, G.R. No. 220598, July 19, 2016*).

Q: Is the crime of plunder *mala prohibita* or *mala in se*?

A: The legislative declaration in RA No. 7659 that plunder is a heinous offense implies that it is a *malum in se*. For when the acts punished are inherently immoral or inherently wrong, they are *mala in se* and it does not matter that such acts are punished in a special law, especially since in the case of plunder the predicate crimes are mainly *mala in se*. Indeed, it would be absurd to treat prosecutions for plunder as though they are mere prosecutions for violations of the Bouncing Check Law (B.P. Blg. 22) or of an ordinance against jaywalking, without regard to the inherent wrongness of the acts (*Estrada v. Sandiganbayan, G.R. No. 148560, November 19, 2001*).

SERIES/COMBINATION

Combination

Combination refers to at least two (2) acts falling under different categories of enumeration provided in Sec. 1, par. (d) (*Estrada v. Sandiganbayan, G.R. No. 148560. November 19, 2001*).

Series

Series refers to two (2) or more overt or criminal acts falling under the same category of enumeration found in Sec. 1, par. (d) (*Estrada v. Sandiganbayan, G.R. No. 148560. November 19, 2001*).

Rule of evidence

Is it not necessary to prove each and every criminal act done by the accused to commit the crime of plunder. It is sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy (*Sec. 4, RA 7080*).

PATTERN

Pattern

Pattern consists of at least a combination or series of overt or criminal acts enumerated in subsections (1) to (6) of Sec. 1 (d) directed towards a common purpose or goal, which is to enable the public officer to amass, accumulate or acquire ill-gotten wealth, indicative of the overall unlawful scheme or conspiracy to achieve said common goal. As commonly understood, the term 'overall unlawful scheme' indicates a 'general plan of action or method' which the principal accused and public officer and others conniving with him follow to achieve the aforesaid common goal (*Estrada v. Sandiganbayan, G.R. No. 148560. November 19, 2001*).

The said acts are mentioned only as predicate acts of the crime of plunder and the allegations relative thereto are not to be taken or to be understood as allegations charging separate criminal offenses punished under the RPC, the Anti-Graft and Corrupt Practices Act and Code of Conduct and Ethical Standards for Public Officials and Employees. It bears stressing that the predicate acts merely constitute acts of plunder and are not crimes separate and independent of the crime of plunder (*Serapio v. Sandiganbayan, G.R. No. 148468, January 28, 2003*).

NOTE: Under Sec. 4, "in furtherance of the scheme or conspiracy" implies that plunder cannot be committed by just one person.

Q: Senator X, with the help of his subordinates, acquired the amount of P100,000,000.00 through a misappropriation of public funds in just a single transaction. Is plunder committed?

A: NO. There must be combination or series of the means or similar schemes in Sec. 1 (d) of RA 7080. As defined in *Estrada v. Sandiganbayan (2001)*, a combination and a series require **at least two** overt criminal acts in the aggregate amount or total value of at least P50,000,000.00. Thus, if there is only one transaction, the crime of plunder is not committed, regardless of the amount amassed by the public officer.

Q: The Prosecution failed to prove that GMA and Aguas benefited in the act of raids of the public treasury. The Prosecution asserts that personal benefit is not a requirement for plunder. Is the Prosecution correct?



A: NO. In order to prove the predicate act of raids of the public treasury, there is a requirement of personal benefit on the part of the main plunderer or his co-conspirators by virtue of their plunder. As a result, not only did the Prosecution fail to show where the money went but, more importantly, that GMA and Aguas had personally benefited from the same. Hence, the Prosecution did not prove the predicate act of raids on the public treasury beyond reasonable doubt. (*Macapagal-Arroyo, G.R. No. 220598, July 19, 2016*).

ANTI-SEXUAL HARASSMENT RA 7877

State policy

The State shall:

1. Value the dignity of every individual;
2. Enhance the development of its human resources;
3. Guarantee full respect for human rights; and
4. Uphold the dignity of workers, employees, applicants for employment, students or those undergoing training, instruction or education (*Sec. 2, R.A. 7877*).

PERSONS LIABLE

In a work, education or training-related environment, sexual harassment may be committed by an:

1. Employer, Employee, Manager, Supervisor, Agent of the Employer,
2. Teacher, Instructor, Professor, Coach, Trainer, or
3. Any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment:
 - a. Demands
 - b. Requests or
 - c. Requires

NOTE: Any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of R.A. 7877 (*Sec. 3 R.A. 7877*).

Liability of the employer, head of office, educational or training institution

They shall be solidarily liable for damages arising from the acts of sexual harassment committed in

the employment, education or training environment *provided:*

1. They are informed of such acts by the offended party; and
2. No immediate action is taken thereon (*Sec. 5, R.A. 7877*).

Gravamen of the crime

The gravamen of the offense in sexual harassment is not the violation of the employee's sexuality but the abuse of power employed by the employer (*Philippine Aeolus Automotive United Corporation v. NLRC, G.R. No. 124617, April 28, 2000*).

Categorical demand or request for sexual favor is not required

While the provision states that there must be a "demand, request or requirement of a sexual favor." It is not necessary that the demand, request or requirement of a sexual favor be articulated in a categorical manner. It may be discerned, with equal certitude, from the acts of the offender.

Likewise, it is not essential that the demand, request or requirement be made as a condition for continued employment or for promotion to a higher position. It is enough that the respondent's acts result in creating an intimidating, hostile or offensive environment for the employee (*Domingo v. Rayala, G.R. No. 155831, February 18, 2008*).

NOTE: The laws is applicable to both sexes.

When sexual harassment is committed

1. In a *work-related or employment environment*:
 - a. The sexual favor is made as a condition:
 - In the hiring or in the employment, re-employment or continued employment of said individual; or
 - In granting said individual favorable compensation, terms, conditions, promotions, or privileges; or
 - Where the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in a way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee (*Quid Pro Quo Sexual Harassment*);

- b. The above acts would impair the employee's rights or privileges under existing labor laws; or
 - c. The above acts would result in an intimidating, hostile, or offensive environment for the employee (*Hostile Environment Harassment*) (*Sec. 3 (a), RA 7877*).
2. In an *education or training environment* sexual harassment is employed:
- a. Against one who is under the care, custody or supervision of the offender;
 - b. Against one whose education, training, apprenticeship or tutorship is entrusted to the offender;
 - c. When sexual favor is made a condition to the giving of a passing grade, or the granting of honors and scholarships, or the payment of a stipend, allowance or other benefits, privileges, or considerations; or
 - d. When sexual advances result in an intimidating, hostile or offensive environment for the student, trainee or apprentice (*Sec. 3 (b), RA 7877*).

Duty of the employer or head of office in a work-related, education or training environment

- 1. Prevent or deter the commission of acts of Sexual Harassment, and
- 2. Provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment (*Sec. 4, RA. 7877*).

Towards this end, the employer or head of office shall:

- a. Promulgate appropriate rules and regulations in consultation with and jointly approved by the employees or students or trainees, through their duly designated representatives, prescribing the procedure for the investigation of Sexual Harassment cases and the administrative sanctions therefor.

NOTE: Administrative sanctions shall not be a bar to prosecution in the proper courts for unlawful acts of Sexual Harassment. The said rules and regulations issued shall include, among others, guidelines on proper decorum in the workplace and educational or training institutions.

- b. Create a committee on decorum and investigation of cases on Sexual Harassment.
- c. The employer or head of office, education or training institution shall disseminate or post a copy of this R.A. 7877 for the information of all concerned (*Sec. 4, R.A. 7877*).

NOTE: The victim of work, education or training-related sexual harassment is not precluded from instituting a separate and independent action for damages and other affirmative relief (*Sec. 6, RA 7877*).

Three-fold liability rule

An act of sexual harassment may give rise to civil, criminal, and administrative liability on the part of the offender, each proceeding can proceed independently of the others (*Domingo v. Rayala, G.R. No. 155831, February 18, 2008*).

Prescription period

The civil, criminal, and administrative action shall prescribe in 3 years.

Q: A Personnel Manager, while interviewing an attractive female applicant for employment, stared directly at her for prolonged periods, albeit in a friendly manner. After the interview, the manager accompanied the applicant to the door, shook her hand and patted her on the shoulder. He also asked the applicant if he could invite her for dinner and dancing at some future time. Did the Personnel Manager, by the above acts, commit Sexual Harassment? Reason. (2000 BAR)

A: Yes. The personnel manager is in a position to grant or not to grant a favor (a job) to the applicant. Under the circumstances, inviting the applicant for dinner or dancing creates a situation hostile or unfriendly to the applicant's chances for a job if she turns down the invitation (*Sec. 3(a)(3), RA 7877*).

Q: In the course of an interview, another female applicant inquired from the same Personnel Manager if she had the physical attributes required for the position she applied for. The Personnel Manager replied: "You will be more attractive if you will wear micro-mini dresses without the undergarments that ladies normally wear." Did the Personnel Manager, by the above



reply, commit an act of sexual harassment?
Reason.

A: YES. The remarks would result in an offensive or hostile environment for the employee. Moreover, the remarks did not give due regard to the applicant's feelings and it is a chauvinistic disdain of her honor, justifying the finding of Sexual Harassment (*Villarama v. NLRC, G.R. No. 106341, September 02, 1994*).

Q: Pedrito Masculado, a college graduate from the province, tried his luck in the city and landed a job as a utility/maintenance man at the warehouse of a big shopping mall. After working as a casual employee for 6 months, he signed a contract for probationary employment for 6 months. Being well-built and physically attractive, his supervisor, Mr. Hercules Barak, took special interest to befriend him. When his probationary period was about to expire, he was surprised when one afternoon after working hours, Mr. Barak followed him to the men's comfort room. After seeing that no one else was around, Mr. Barak placed his arm over Pedrito's shoulder and softly said: "You have great potential to become a regular employee and I think I can give you a favorable recommendation. Can you come over to my condo unit on Saturday evening so we can have a little drink? I'm alone, and I'm sure you want to stay longer with the company."

Is Mr. Barak liable for Sexual Harassment committed in a work-related or employment environment? (2000 BAR)

A: Yes. The elements of Sexual Harassment are all present. The act of Mr. Barak was committed in a workplace. Mr. Barak, as supervisor of Pedrito Masculado, has authority, influence and moral ascendancy over Masculado.

Given the specific circumstances mentioned in the question like Mr. Barak following Masculado to the comfort room, etc. Mr. Barak was requesting a sexual favor from Masculado for a favorable recommendation regarding the latter's employment. It is not impossible for a male, who is a homosexual, to ask for a sexual favor from another male.

**ANTI-TORTURE ACT
RA 9745**

Torture

An act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession; punishing him/her for an act he/she or a third person has committed or is suspected of having committed; or intimidating or coercing him/her or a third person; or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a person in authority or agent of a person in authority (*Sec. 3 (a), RA 9745*).

NOTE: It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions (*Sec. 3 (a), RA 9745*).

Other cruel, inhuman and degrading treatment or punishment

A deliberate and aggravated treatment or punishment not enumerated under Section 4 of this Act, inflicted by a person in authority or agent of a person in authority against a person under his/her custody, which attains a level of severity causing suffering, gross humiliation or debasement to the latter (*Sec. 3(b), RA 9745*).

NOTE: The assessment of the level of severity shall depend on all the circumstances of the case, including the duration of the treatment or punishment, its physical and mental effects and, in some cases, the sex, religion, age and state of health of the victim (*Sec. 5, RA 9745*).

PUNISHABLE ACTS

I. Acts of Torture

Torture, as punished under the law, may either be physical or mental/psychological.

A. Physical torture is a form of treatment or punishment that causes severe pain, exhaustion, disability or dysfunction of one or more parts of the body, such as:

1. Systematic beating, head-banging, punching, kicking, striking with truncheon

- or rifle butt or other similar objects, and jumping on the stomach;
2. Food deprivation or forcible feeding with spoiled food, animal or human excreta and other stuff or substances not normally eaten;
3. Electric shock;
4. Cigarette burning; burning by electrically heated rods, hot oil or acid, or by the rubbing of pepper or other chemical substances on mucous membranes, or acids or spices directly on the wound;
5. The submersion of the head in water or water polluted with excrement, urine, vomit and/or blood until the brink of suffocation;
6. Being tied or forced to assume fixed and stressful bodily position;
7. Rape and sexual abuse, including the insertion of foreign objects into the sex organ or rectum, or electrical torture of the genitals;
8. Mutilation or amputation of the essential parts of the body such as the genitalia, ear, tongue, etc.;
9. Dental torture or the forced extraction of the teeth;
10. Pulling out of fingernails;
11. Harmful exposure to the elements such as sunlight and extreme cold;
12. The use of plastic bag and other materials placed over the head to the point of asphyxiation;
13. The use of psychoactive drugs to change the perception, memory, alertness or will of a person, such as:
 - i. The administration or drugs to induce confession and/or reduce mental competency; or
 - ii. The use of drugs to induce extreme pain or certain symptoms of a disease; and
14. Other analogous acts of physical torture.

B. Mental/psychological torture refers to acts calculated to affect or confuse the mind and/or undermine a person's dignity and morale, such as:

1. Blindfolding;
2. Threatening a person(s) or his/her relative(s) with bodily harm, execution or other wrongful acts;
3. Confinement in solitary cells or secret detention places;
4. Prolonged interrogation;
5. Preparing a prisoner for a "show trial," public display or public humiliation of a detainee or prisoner;

6. Causing unscheduled transfer of a person deprived of liberty from one place to another, creating the belief that he/she will be summarily executed;
7. Maltreating a member/s of a person's family;
8. Causing the torture sessions to be witnessed by the person's family, relatives or any third party;
9. Denial of sleep/rest;
10. Shame infliction such as stripping the person naked, parading him/her in public places, shaving the victim's head or putting marks on his/her body against his/her will;
11. Deliberately prohibiting the victim to communicate with any member of his/her family; and
12. Other analogous acts of mental/psychological torture (*Sec. 4, RA 9745*)

II. Acts constituting cruel, inhuman and degrading treatment or punishment

Applicable to ALL circumstances

A state of war or a threat of war, internal political instability, or any other public emergency, or a document or any determination comprising an "order of battle" shall not and can never be invoked as a justification for torture and other cruel, inhuman and degrading treatment or punishment (*Sec. 6, RA 9745*).

Applicability of Exclusionary Rule

GR: Any confession, admission or statement obtained as a result of torture shall be inadmissible in evidence in any proceedings.

XPN: If the same is used as evidence against a person or persons accused of committing torture (*Sec. 8, RA 9745*).

Torture as a Separate and Independent Crime

Torture as a crime shall not absorb or shall not be absorbed by any other crime or felony committed as a consequence, or as a means in the conduct or commission thereof. In which case, torture shall be treated as a separate and independent criminal act whose penalties shall be imposable without prejudice to any other criminal liability provided for by domestic and international laws (*Sec. 15, RA 9745*).

Applicability of Refouler

No person shall be expelled, returned or extradited to another State where there are substantial grounds to believe that such person shall be in danger of being subjected to torture (*Sec. 17, RA 9745*).

PERSONS LIABLE

1. As **principals** for the crime of torture or other cruel or inhuman and degrading treatment or punishment:
 - a. Any person who actually participated or induced another in the commission of torture or other cruel, inhuman and degrading treatment or punishment, or who cooperated in the execution of the act of torture or other cruel, inhuman and degrading treatment or punishment by previous or simultaneous acts;
 - b. Any superior military, police or law enforcement officer or senior government official who issued an order to any lower ranking personnel to commit torture for whatever purpose; and
 - c. The immediate commanding officer of the unit concerned of the AFP or the immediate senior public official of the PNP and other law enforcement agencies, if:
 - i. By his act or omission, or negligence, he has led, assisted, abetted or allowed, whether directly or indirectly, the commission of torture by his/her subordinates; or
 - ii. He/she has knowledge of or, owing to the circumstances at the time, should have known that acts of torture or other cruel, inhuman and degrading treatment or punishment will be committed, is being committed, or has been committed by his/her subordinates or by others within his/her area of responsibility and, despite such knowledge, did not take preventive or corrective action either before, during or immediately after its commission, when he/she has the authority to prevent or investigate allegations of torture or other cruel, inhuman and degrading treatment or punishment but failed to prevent or investigate allegations of such act, whether deliberately or due to negligence.
2. Any public officer or employee will be liable as an **accessory** if he/she has knowledge that torture or other cruel, inhuman and degrading

treatment or punishment is being committed and without having participated in its commission, either as principal or accomplice, takes part subsequent to its commission:

- a. By profiting from or assisting the offender to profit from the effects of the act of torture or other cruel, inhuman and degrading treatment or punishment; or
- b. By concealing the act of torture or other cruel, inhuman and degrading treatment or punishment and/or destroying the effects or instruments of torture in order to prevent its discovery; or
- c. By harboring, concealing or assisting in the escape of the principal/s in the act of torture or other cruel, inhuman and degrading treatment or punishment, provided the accessory acts are done with the abuse of the official's public functions (*Sec. 13, RA 9745*).

Prohibited Detention

Secret detention places, solitary confinement, incommunicado or other similar forms of detention, where torture may be carried out with impunity are prohibited (*Sec. 7, RA 9745*).

RIGHTS TO PHYSICAL, MEDICAL AND PSYCHOLOGICAL EXAMINATION

Before and after interrogation, every person arrested, detained or under custodial investigation shall have the right to be informed of his/her right to demand physical examination by an independent and competent doctor of his/her own choice. Furthermore, any person arrested, detained or under custodial investigation, including his/her immediate family, shall have the right to immediate access to proper and adequate medical treatment.

The physical examination and/or psychological evaluation of the victim shall be contained in a medical report, duly signed by the attending physician, which shall include in detail his/her medical history and findings, and which shall be attached to the custodial investigation report. Such report shall be considered a public document (*Sec. 12, RA 9745*).

NOTE: Any person who does not wish to avail of the rights may knowingly and voluntarily waive such rights in writing, executed in the presence and assistance of his/her counsel (*Sec. 12, RA 9745*).

RIGHTS OF A VICTIM

1. To have a prompt and impartial investigation by the CHR and other concerned government agencies such as the DOJ, the PAO, the PNP, the NBI and the AFP;

NOTE: A prompt investigation shall mean a maximum period of sixty (60) working days from the time a complaint for torture is filed within which an investigation report and/or resolution shall be completed and made available. An appeal whenever available shall be resolved within the same period prescribed herein.

2. To have sufficient government protection against all forms of harassment, threat and/or intimidation as a consequence of the filing of a complaint for torture or the presentation of evidence for such complaint; and

NOTE: The protection extends to other persons involved in the investigation/prosecution such as his/her lawyer, witnesses and relatives.

3. To be given sufficient protection in the manner by which he/she testifies and presents evidence in any forum to avoid further trauma (*Sec. 9, RA 9745*).

Compensation to Victims of Torture

Any person who has suffered torture shall have the right to claim for compensation as provided for under Republic Act No. 7309: Provided, that in no case shall compensation be any lower than Ten thousand pesos (P10,000.00).

NOTE: Victims of torture shall also have the right to claim for compensation from such other financial relief programs that may be made available to him/her under existing law and rules and regulations (*Sec. 18, RA 9745*).

**ANTI-TRAFFICKING IN PERSONS ACT
RA 9208, AS AMENDED BY RA 10364**

State Policy

To give highest priority to the enactment of measures and development of programs that will promote human dignity, protect the people from

any threat of violence and exploitation, eliminate trafficking in persons, and mitigate pressures for involuntary migration and servitude of persons and to ensure their recovery, rehabilitation and reintegration into the mainstream of society (*Sec. 2RA 9208, as amended*).

PUNISHABLE ACTS

1. *Acts of Trafficking in Persons committed by any person, natural or juridical*
 - a. To recruit, obtain, hire, provide, offer, transport, transfer, maintain, harbor, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, or sexual exploitation; (**BAR 2014**)
 - b. To introduce or match for money, profit, or material, economic or other consideration, any person or, as provided for under Republic Act No. 6955, any Filipino woman to a foreign national, for marriage for the purpose of acquiring, buying, offering, selling or trading him/her to engage in prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
 - c. To offer or contract marriage, real or simulated, for the purpose of acquiring, buying, offering, selling, or trading them to engage in prostitution, pornography, sexual exploitation, forced labor or slavery, involuntary servitude or debt bondage;
 - d. To undertake or organize tours and travel plans consisting of tourism packages or activities for the purpose of utilizing and offering persons for prostitution, pornography or sexual exploitation;
 - e. To maintain or hire a person to engage in prostitution or pornography;
 - f. To adopt persons by any form of consideration for exploitative purposes or to facilitate the same for purposes of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
 - g. To adopt or facilitate the adoption of persons for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage; and
 - h. To recruit, hire, adopt, transport, transfer, obtain, harbor, maintain, provide, offer, receive or abduct a person, by means of



threat or use of force, fraud, deceit, violence, coercion, or intimidation for the purpose of removal or sale of organs of said person;

- i. To recruit, transport, obtain, transfer, harbor, maintain, offer, hire, provide, receive or adopt a child to engage in armed activities in the Philippines or abroad;
- j. To recruit, transport, transfer, harbor, obtain, maintain, offer, hire, provide or receive a person by means defined in Section 3 of this Act for purposes of forced labor, slavery, debt bondage and involuntary servitude, including a scheme, plan, or pattern intended to cause the person either:
 - i. To believe that if the person did not perform such labor or services, he or she or another person would suffer serious harm or physical restraint; or
 - ii. To abuse or threaten the use of law or the legal processes; and
- k. To recruit, transport, harbor, obtain, transfer, maintain, hire, offer, provide, adopt or receive a child for purposes of exploitation or trading them, including but not limited to, the act of baring and/or selling a child for any consideration or for barter for purposes of exploitation. Trafficking for purposes of exploitation of children shall include:
 - i. All forms of slavery or practices similar to slavery, involuntary servitude, debt bondage and forced labor, including recruitment of children for use in armed conflict;
 - ii. The use, procuring or offering of a child for prostitution, for the production of pornography, or for pornographic performances;
 - iii. The use, procuring or offering of a child for the production and trafficking of drugs; and
 - iv. The use, procuring or offering of a child for illegal activities or work which, by its nature or the circumstances in which it is carried out, is likely to harm their health, safety or morals; and
- l. To organize or direct other persons to commit the offenses defined as acts of trafficking under RA 9208 (*Sec. 4, RA 9208, as amended*).

2. Attempted Trafficking

Where there are acts to initiate the commission of a trafficking offense but the offender failed to or

did not execute all the elements of the crime, by accident or by reason of some cause other than voluntary desistance, such overt acts shall be deemed as an attempt to commit an act of trafficking in persons. As such, an attempt to commit any of the offenses enumerated in Section 4 shall constitute attempted trafficking in persons (*par. 1, Sec. 4-A, RA 9208*).

Acts that constitute attempted trafficking in persons where the victim is a child

- a. Facilitating the travel of a child who travels alone to a foreign country or territory without valid reason therefor and without the required clearance or permit from the Department of Social Welfare and Development, or a written permit or justification from the child's parent or legal guardian;
- b. Executing, for a consideration, an affidavit of consent or a written consent for adoption;
- c. Recruiting a woman to bear a child for the purpose of selling the child;
- d. Simulating a birth for the purpose of selling the child; and
- e. Soliciting a child and acquiring the custody thereof through any means from among hospitals, clinics, nurseries, daycare centers, refugee or evacuation centers, and low-income families, for the purpose of selling the child (*par. 2, Sec. 4-A, RA 9208*).
 - a. *Acts that promote trafficking in persons, or facilitate trafficking in persons*
 - b. To knowingly lease or sublease, use or allow to be used any house, building or establishment for the purpose of promoting trafficking in persons;
 - c. To produce, print and issue or distribute unissued, tampered or fake counseling certificates, registration stickers, overseas employment certificates or other certificates of any government agency which issues these certificates, decals and such other markers as proof of compliance with government regulatory and pre-departure requirements for the purpose of promoting trafficking in persons;
 - d. To advertise, publish, print, broadcast or distribute, or cause the advertisement, publication, printing, broadcasting or distribution by any means, including the use of information technology and the internet, of any brochure, flyer, or any propaganda material that promotes trafficking in persons;

- e. To assist in the conduct of misrepresentation or fraud for purposes of facilitating the acquisition of clearances and necessary exit documents from government agencies that are mandated to provide pre-departure registration and services for departing persons for the purpose of promoting trafficking in persons;
 - f. To facilitate, assist or help in the exit and entry of persons from/to the country at international and local airports, territorial boundaries and seaports who are in possession of unissued, tampered or fraudulent travel documents for the purpose of promoting trafficking in persons;
 - g. To confiscate, conceal, or destroy the passport, travel documents, or personal documents or belongings of trafficked persons in furtherance of trafficking or to prevent them from leaving the country or seeking redress from the government or appropriate agencies;
 - h. To knowingly benefit from, financial or otherwise, or make use of, the labor or services of a person held to a condition of involuntary servitude, forced labor, or slavery;
 - i. To tamper with, destroy, or cause the destruction of evidence, or to influence or attempt to influence witnesses, in an investigation or prosecution of a case under RA 9208;
 - j. To destroy, conceal, remove, confiscate or possess, or attempt to destroy, conceal, remove, confiscate or possess, any actual or purported passport or other travel, immigration or working permit or document, or any other actual or purported government identification, of any person in order to prevent or restrict, or attempt to prevent or restrict, without lawful authority, the person's liberty to move or travel in order to maintain the labor or services of that person; or
 - k. To utilize his or her office to impede the investigation, prosecution or execution of lawful orders in a case under RA 9208(*Sec. 4, RA 9208, as amended*):
3. *Any person who buys or engages the services of trafficked persons for prostitution (Sec. 11, RA 9208, as amended).*

PERSONS LIABLE

Principal

1. Any person, natural or juridical, who commits any of the punishable acts of trafficking;
2. Any person who promote or facilitate the acts of trafficking; or
3. Any person who buys or engages the services of trafficked persons for prostitution shall be penalized.

Accomplice

Whoever knowingly aids, abets, cooperates in the execution of the offense by previous or simultaneous acts defined under RA 9208, as amended (*Sec. 4-B, RA 9208*).

Accessories

Whoever has the knowledge of the commission of the crime, and without having participated therein, either as principal or as accomplices, take part in its commission in any of the following manners:

- a. By profiting themselves or assisting the offender to profit by the effects of the crime;
- b. By concealing or destroying the body of the crime or effects or instruments thereof, in order to prevent its discovery;
- c. By harboring, concealing or assisting in the escape of the principal of the crime, provided the accessory acts with abuse of his or her public functions or is known to be habitually guilty of some other crime (*Sec. 4-C, RA 9208*).

QUALIFIED TRAFFICKING IN PERSONS

The qualifying acts are:

1. When the trafficked person is a child;
2. When the adoption is effected through Republic Act No. 8043, and said adoption is for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
3. When the crime is committed by a syndicate, or in large scale.

NOTE: Trafficking is deemed committed by a **syndicate** if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in **large scale** if committed against three (3) or more persons, individually or as a group. **(BAR 2015)**



4. When the offender is a spouse, an ascendant, parent, sibling, guardian or a person who exercises authority over the trafficked person or when the offense is committed by a public officer or employee;
5. When the trafficked person is recruited to engage in prostitution with any member of the military or law enforcement agencies;
6. When the offender is a member of the military or law enforcement agencies;
7. When by reason or on occasion of the act of trafficking in persons, the offended party dies, becomes insane, suffers mutilation or is afflicted with Human Immunodeficiency Virus (HIV) or the Acquired Immune Deficiency Syndrome (AIDS);
8. When the offender commits one or more violations of Section 4 over a period of sixty (60) or more days, whether those days are continuous or not; and
9. When the offender directs or through another manages the trafficking victim in carrying out the exploitative purpose of trafficking (*Sec. 6, RA 9208*).

Trafficked persons are not penalized

Trafficked persons shall be recognized as victims of the act or acts of trafficking and as such, shall not be penalized for unlawful acts committed as a direct result of, or as an incident or in relation to, being trafficked based on the acts of trafficking enumerated in this Act or in obedience to the order made by the trafficker in relation thereto. In this regard, the consent of a trafficked person to the intended exploitation set forth in this Act shall be irrelevant (*Sec. 17, RA 9208 as amended by RA 10364*).

NOTE: Victims of trafficking for purposes of prostitution as defined under Section 4 of this Act are not covered by Article 202 of the Revised Penal Code and as such, shall not be prosecuted, fined, or otherwise penalized under the said law (*Sec. 17, RA 9208 as amended by RA 10364*).

Q: Ronnie was able to convince Lolita to work as a restaurant entertainer in Malaysia. When they were already at the restaurant, a Filipina woman working there said that the place is a prostitution den and the women there are used as prostitutes. Lolita was forced to work as entertainer. Several customers used Lolita many times. Some even had sexual intercourse with her every hour. Ronnie was then sued for Trafficking in Persons. He claims that he

cannot be convicted of the crime charged because he was not part of the group that transported Lolita from the Philippines to Malaysia. Is he correct?

A: NO. Trafficking in Persons under Sec. 3(a) and 4 of RA 9208 is not only limited to transportation of victims, but also includes the act of recruitment of victims for trafficking. The crime of recruitment for prostitution also constitutes trafficking (*People v. Lalli et al., G.R. No. 195419, October 12, 2011*).

Inadmissibility of past sexual behavior or predisposition as evidence

The past sexual behavior or the sexual predisposition of a trafficked person shall be considered inadmissible in evidence for the purpose of proving consent of the victim to engage in sexual behavior, or to prove the predisposition, sexual or otherwise, of a trafficked person (*Sec. 17-B, RA 9208 as amended by RA 10364*).

NOTE: The consent of a victim of trafficking to the intended exploitation shall be irrelevant where any of the means set forth in Section 3(a) of this Act has been used (*Sec. 17-B, RA 9208 as amended by RA 10364*).

Exercise of Extra-Territorial Jurisdiction

GR: The State shall exercise jurisdiction over any act defined under RA 9208 even if committed outside the Philippines and whether or not such act or acts constitute an offense at the place of commission, the crime being a continuing offense, having been commenced in the Philippines and the other elements having been committed in another country, if the suspect or accused:

1. Is a Filipino citizen; or
2. Is a permanent resident of the Philippines; or
3. Has committed the act against a citizen of the Philippines.

XPN: If the foreign government has prosecuted or is prosecuting such person for the conduct constituting the offense.

XPN to XPN: Upon approval of the Secretary of Justice (*Sec. 26-A, RA 9208*).

Prescriptive Period

- a. Trafficking cases - ten (10) years; and
- b. Trafficking cases committed by a syndicate or in a large scale or against a child - twenty (20) years (*Sec. 12, RA 9208*).

**ANTI-VIOLENCE AGAINST WOMEN AND THEIR
CHILDREN ACT
RA 9262**

Violence against women and their children

Refers to any act or a series of acts committed by **ANY PERSON** against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty (*Sec. 3(a), RA 9262*).

NOTE: A man cannot be a victim under this Act. He should resort to the appropriate provisions of the Revised Penal Code.

Children

Refers to those below eighteen (18) years of age or older but are incapable of taking care of themselves. It includes the biological children of the victim and other children under her care (*Sec. 3(h), RA 9262*).

PUNISHABLE ACTS

The crime of violence against women and their children is committed through any of the following acts:

1. Causing physical harm to the woman or her child.
2. Threatening to cause the woman or her child physical harm.
3. Attempting to cause the woman or her child physical harm.
4. Placing the woman or her child in fear of imminent physical harm.
5. Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or child. This shall include, but not

limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct:

- a. Threatening to deprive or actually depriving the woman or her child of custody to her/his family;
 - b. Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support;
 - c. Depriving or threatening to deprive the woman or her child of a legal right;
 - d. Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim's own money or properties, or solely controlling the conjugal or common money, or properties.
6. Inflicting or threatening to inflict physical harm on oneself for the purpose of controlling her actions or decisions.
 7. Causing or attempting to cause the woman or her child to engage in any sexual activity which does not constitute rape, by force or threat of force, physical harm, or through intimidation directed against the woman or her child or her/his immediate family.
 8. Engaging in purposeful, knowing, or reckless conduct, personally or through another that alarms or causes substantial emotional or psychological distress to the woman or her child. This shall include, but not be limited to, the following acts:
 - a. Stalking or following the woman or her child in public or private places;
 - b. Peering in the window or lingering outside the residence of the woman or her child;
 - c. Entering or remaining in the dwelling or on the property of the woman or her child against her/his will;
 - d. Destroying the property and personal belongings or inflicting harm to animals or pets of the woman or her child;
 - e. Engaging in any form of harassment or violence;
 9. Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children of access to the woman's child/children (*Sec. 5, RA 9262*).

Prescriptive Period



1. Acts falling under Nos. 1 - 6 shall prescribe in twenty (20) years.
2. Acts falling under Nos. 7 - 9 shall prescribe in ten (10) years (Sec. 24, RA 9262).

NOTE: VAWC shall be considered a public offense which may be prosecuted upon the filing of a complaint by any citizen having personal knowledge of the circumstances involving the commission of the crime (Sec. 25, RA 9262).

The elements of the crime of violence against women through harassment are:

1. The offender has or had a sexual or dating relationship with the offended woman;
2. The offender, by himself or through another, commits an act or series of acts of harassment against the woman; and
3. The harassment alarms or causes substantial emotional or psychological distress to her (*Ang v. CA, G.R. No. 182835, April 20, 2010*).

NOTE: Section 3(a) of R.A. 9262 punishes any act or series of acts that constitutes violence against women. This means that a single act of harassment, which translates into violence, would be enough. The object of the law is to protect women and children. Punishing only violence that is repeatedly committed would license isolated ones. (*Ang v. CA, G.R. No. 182835, April 20, 2010*).

Dating relationship vis-à-vis Sexual Relations

“Dating relationship” refers to a situation wherein the parties live as husband and wife without the benefit of marriage or are romantically involved over time and on a continuing basis during the course of the relationship (Sec. 3(e), RA 9262).

NOTE: A casual acquaintance or ordinary socialization between two individuals in a business or social context is not a dating relationship.

“Sexual relations” refer to a single sexual act which may or may not result in the bearing of a common child (Sec. 3(f), RA 9262).

Prohibited Defense

1. Being under the influence of alcohol, any illicit drug, or any other mind-altering substance (Sec. 27, RA 9262)
2. End of dating relationship prior to the violence

NOTE: It is immaterial whether the relationship had ceased for as long as there is sufficient evidence showing the past or present existence of such relationship between the offender and the victim when the physical harm was committed (*Dabalos v. RTC, Branch 59, Angeles City (Pampanga), G.R. No. 193960 January 7, 2013*).

Four (4) Acts included under Sec. 3: (PEPS)

1. Physical violence (Sec. 3(a)(A), RA 9262);
2. Economic abuse (Sec. 3(a)(D), RA 9262);
3. Psychological violence (Sec. 3(a)(C), RA 9262); and
4. Sexual violence (Sec. 3(a)(B), RA 9262).

Physical Violence

Refers to acts that include bodily or physical harm (Sec. 3(a)(A), RA 9262).

Economic abuse (BAR 2010)

Refers to acts that make or attempt to make a woman financially dependent which includes, but is not limited to the following:

1. Withdrawal of financial support or preventing the victim from engaging in any legitimate profession, occupation, business or activity, except in cases wherein the other spouse/partner objects on valid, serious and moral grounds as defined in Article 73 of the Family Code;
2. Deprivation or threat of deprivation of financial resources and the right to the use and enjoyment of the conjugal, community or property owned in common;
3. Destroying household property;
4. Controlling the victims’ own money or properties or solely controlling the conjugal money or properties (Sec. 3(a)(D), RA 9262).

Psychological violence

Refers to acts or omissions causing or likely to cause mental or emotional suffering of the victim such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and marital infidelity. It includes causing or allowing the victim to witness the physical, sexual or psychological abuse of a member of the family to which the victim belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children (Sec. 3(a)(C), RA 9262).

Sexual violence

Refers to an act which is sexual in nature, committed against a woman or her child. It includes, but is not limited to:

1. Rape, sexual harassment, acts of lasciviousness, treating a woman or her child as a sex object, making demeaning and sexually suggestive remarks, physically attacking the sexual parts of the victim's body, forcing her/him to watch obscene publications and indecent shows or forcing the woman or her child to do indecent acts and/or make films thereof, forcing the wife and mistress/lover to live in the conjugal home or sleep together in the same room with the abuser;
2. Acts causing or attempting to cause the victim to engage in any sexual activity by force, threat of force, physical or other harm or threat of physical or other harm or coercion.
3. Prostituting the woman or child (*Sec. 3(a)(B), RA 9262*).

Protection Order

Protection Order is an order issued for the purpose of preventing further acts of violence against a woman or her child (*Sec. 8, RA 9262*).

Kinds of protection orders

1. *Barangay Protection Orders* (BPO)
2. *Temporary Protection Orders* (TPO)
3. *Permanent Protection Orders*. (PPO)

BPO

BPO refers to the protection order issued by the *Punong Barangay* ordering the perpetrator to desist from committing acts under Section 5 (a) and (b) (*Sec. 14, RA 9262*).

Who issues a BPO

The *Punong Barangay* may issue a BPO. If he is unavailable, the application shall be acted upon by any available *Barangay Kagawad* (*Sec. 14, RA 9262*).

NOTE: If the BPO is issued by a *Barangay Kagawad*, the order must be accompanied by an attestation by the *Barangay Kagawad* that

the *Punong Barangay* was unavailable at the time for the issuance of the BPO.

Period of effectivity of BPO

The period of effectivity of BPO shall be 15 days (*Sec. 14, RA 9262*).

TPO

TPO refers to the protection order issued by the court on the date of filing of the application after *ex parte* determination that such order should be issued (*Sec. 15, RA 9262*).

Period of effectivity of TPO

The period of effectivity of TPO shall be 30 days (*Sec. 15, RA 9262*).

NOTE: The court shall schedule a hearing on the issuance of a PPO prior to or on the date of the expiration of the TPO (*Sec. 15, RA 9262*).

PPO

PPO refers to protection order issued by the court after notice and hearing (*Sec. 16, RA 9262*).

NOTE: The court shall not deny the issuance of protection order on the basis of the lapse of time between the act of violence and the filing of the application (*Sec. 16, RA 9262*).

Period of effectivity of PPO

It shall be effective until revoked by a court upon application of the person in whose favor the order was issued (*Sec. 16, RA 9262*).

Where to file TPO and PPO

GR: TPO and PPO are filed in the Family court at the place of residence of petitioner.

XPN: In the absence of the Family court, with the RTC, MeTC, MTC or MCTC with territorial jurisdiction over the place of residence of the petitioner (*Sec. 10, RA 9262*).

The issuance of a BPO or the pendency of application for BPO shall not preclude a petitioner from applying for, or the court from granting a TPO or PPO (*Sec. 8, RA 9262*).

Who may file Petition for Protection Orders

A petition for protection order may be filed by any of the following:

1. The offended party;
2. Parents or guardians of the offended party;
3. Ascendants, descendants or collateral relatives within the fourth civil degree of consanguinity or affinity;
4. Officers or social workers of the DSWD or social workers of local government units (LGUs);
5. Police officers, preferably those in charge of women and children's desks;
6. *Punong Barangay* or *Barangay Kagawad*;
7. Lawyer, counselor, therapist or healthcare provider of the petitioner; or
8. At least two (2) concerned responsible citizens of the city or municipality where the violence against women and their children occurred and who has personal knowledge of the offense committed (*Sec. 9, RA 9262*).

If the applicant is not the victim, the application must be accompanied by an affidavit of the applicant attesting to:

1. The circumstances of the abuse suffered by the victim; and
2. The circumstances of consent given by the victim for the filing of the application.

When disclosure of the address of the victim will pose danger to her life, it shall be so stated in the application. In such a case, the applicant shall:

1. Attest that the victim is residing in the municipality or city over which court has territorial jurisdiction, and
2. Shall provide a mailing address for the purpose of service processing (*Sec. 11, RA 9262*).

NOTE: A TPO cannot be issued in favor of a man against his wife under RA 9262 (*Ocampo v. Judge Arcaya-Chua, A.M. OCA IPI No. 07-2630-RT, April 23, 2010*)

BATTERED WOMAN SYNDROME

Battery

Refers to an act of inflicting physical harm upon the woman or her child resulting to the physical and psychological or emotional distress (*Sec. 3(b), RA 9262*).

Battered Woman Syndrome

Refers to a scientifically defined pattern of psychological and behavioral symptoms found in women living in battering relationships as a result of cumulative abuse (*Sec. 3(c), RA 9262*).

NOTE: In order to be classified as a battered woman, the couple must go through the battering cycle at least twice. (*People v. Genosa, G.R. No. 135981, January 15, 2004*).

3 Phases of Cycle of Violence

1. **Tension-Building Phase** - minor battering occurs - it could be verbal or slight physical abuse or another form of hostile behavior.
2. **Acute battering incident** - characterized by brutality, destructiveness and, sometimes, death. The battered woman deems this incident as unpredictable, yet also inevitable.
3. **Tranquil, loving or (at least nonviolent) phase** - the couple experience profound relief. On one hand, the batterer may show a tender and nurturing behavior towards his partner. On the other hand, the battered woman tries to convince herself that the battery will never happen again (*People v. Genosa, G.R. No. 135981 January 15, 2004*).

Battered Woman Syndrome as a proper defense

Victim-survivors who are found by the courts to be suffering from battered woman syndrome DO NOT incur any criminal and civil liability notwithstanding the absence of any of the elements for justifying circumstances of self-defense under the Revised Penal Code (*Sec. 26, RA 9262*).

Q: BBB and AAA had a relationship when the latter was still raising her first child borne CCC from a previous relationship. During the relationship with BBB, AAA bore two more children namely, DDD and EEE. To legalize their relationship, BBB and AAA married in civil rights and thereafter, the birth certificates of the children, including CCC's, was amended to change their civil status to be legitimated by virtue of the said marriage. However, there were fights and arguments which caused them to have strained relationship that lead them to the filing of a case under the VAWC. Pending the Court's deliberation of the instant case, BBB filed a Manifestation and Motion to Render Judgment Based on a Memorandum of Agreement (MOA).

BBB alleges that on July 29, 2013, he and AAA had entered into a compromise anent the custody, exercise of parental authority over, and support of DDD and EEE. Is the case a proper subject of a compromise agreement?

A: The instant petition is not a proper subject of a compromise agreement. The law explicitly prohibits compromise on any act constituting the crime of violence against women. Thus, in *Garcia v. Drilon*, the Court declared that: Violence, however, is not a subject for compromise. A process which involves parties mediating the issue of violence implies that the victim is somehow at fault.

NOTE: While AAA filed her application for a Temporary Protection Order (TPO) and a Permanent Protection Order (PPO) as an independent action and not as an incidental relief prayed for in a criminal suit, the instant petition cannot be taken outside the ambit of cases falling under the provisions of R.A. 9262. Perforce, the prohibition against subjecting the instant petition to compromise applies (*BBB,* v. AAA*, G.R. No. 193225, February 9, 2015*).

CHILDREN'S SAFETY ON MOTORCYCLES ACT RA 10666

Motorcycle

Refers to any two (2)-wheeled motor vehicle having one (1) or two (2) riding saddles (*Sec. 3 (a), RA 10666*).

Public roads

Refers to roads designed by the national government or local government units as roads for public use such as, but not limited to, national highways, provincial roads, city, municipal and barangay streets (*Sec. 3 (b), RA 10666*).

Foot peg

Refers to a flat form attached to the motorcycles on which to stand or brace the feet (*Sec. 3 (c), RA 10666*).

Rider

Refers to the driver of a motorcycle (*Sec. 3 (d), RA 10666*).

Elements

1. He drove a two (2)-wheeled motorcycle;
2. He drove with a child on board;
3. He drove on public roads where:
 - a. there is heavy volume of vehicles,
 - b. there is a high density of fast moving vehicles; **OR**
 - c. a speed limit of more than 60/kph is imposed.
4. There is an ABSENCE of ANY of the following circumstances:
 - a. The child passenger can comfortably reach his/her feet on the standard foot peg of the motorcycle;
 - b. The child's arms can reach around and grasp the waist of the motorcycle rider; **AND**
 - c. The child is wearing a standard protective helmet (*Sec. 4, RA 10666*).

NOTE: Concurrence of all the circumstances would exempt the rider from criminal liability under the Act.

EXCEPTION

The prohibition shall not apply to cases where the child to be transported requires immediate medical attention (*Sec. 5, RA 10666*).

NOTE: Even if the aforementioned circumstances are not complied with, when the child being transported requires immediate medical attention, the prohibition shall not be applied.

PENALTIES

Penalties

1. First Offense – P3,000.00 fine
2. Second Offense - P5,000.00 fine
3. Third Offense
 - a. P10,000.00 fine; and
 - b. Suspension of offender's driver's license for a period of one (1) month
4. Succeeding Offenses
 - a. P10,000.00 fine; and
 - b. Automatic revocation of the offender's driver's license (*Sec. 6, RA 10666*)

QUALIFYING CIRCUMSTANCE

If **death** shall have resulted or **serious or less serious injuries** shall have been inflicted upon



the child or any other person, a penalty of one (1) year imprisonment shall be imposed upon the motorcycle rider or operator of the motorcycle involved (*Sec. 8, RA 10666*).

NOTE: The imposition of the penalty is *without prejudice* to the penalties provided under The Revised Penal Code, as amended (*Sec. 8, RA 10666*).

AUTHORITY GRANTED TO THE LTO

The LTO has the authority:

1. To increase or adjust the amounts of fines herein imposed (*Sec. 7, RA 10666*).
2. To deputize members of the Philippine National Police (PNP), the Metropolitan Manila Development Authority (MMDA) and the LGUs to carry out enforcement functions and duties (*Sec. 9, RA 10666*).

BOUNCING CHECKS LAW BP 22

Check

A *check* is a bill of exchange drawn on a bank payable on demand (*Sec. 185, Act No. 2031*).

Q: Does BP 22 cover manager's check?

A: NO, BP 22 does not cover manager's check because of its peculiar character and general use in the commercial world, it is as good as the money it represents and is therefore deemed as cash. (1 FESTIN, pp. 145)

PERSONS LIABLE (BAR 2013, 2014)

1. Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment; (*Sec. 1, par. 1, BP 22*)
2. Any person who having sufficient funds in or credit with the drawee bank when he makes or draws and issues a check, shall fail to keep

sufficient funds or to maintain a credit to cover the full amount of the check if presented within a period of 90 days from the date appearing thereon, for which reason it is dishonored by the drawee bank (*Sec. 1, par. 2, BP 22*)

NOTE: Where the check is drawn by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer shall be liable under this Act (*Sec. 1, par. 3, BP 22*)

Elements for violation of B.P. 22 (par. 1)

1. That a person makes or draws and issues any check;
2. The check is drawn or issued to apply on account or for a valuable consideration;
3. The person who makes or draws and issues the check knows at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and
4. At the time, the check was presented for payment at due date, the same was dishonored for insufficiency of funds or credit, or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment.

NOTE: Knowledge of insufficiency of funds is a state of mind, hence, the hardest element to prove.

Elements for violation of B.P. 22 (par. 2)

1. That a person has sufficient funds in or credit with the drawee bank when he makes or draws and issues a check;
2. That he fails to keep sufficient funds or to maintain a credit to cover the full amount of the check if presented within a period of 90 days from the date appearing thereon; and
3. That the check is dishonored by the drawee bank.

Q: A and B agreed to meet at the latter's house to discuss B's financial problems. On his way, one of A's car tires blew up. Before A left the meeting, he asked B to lend him money to buy a new spare tire. B had temporarily exhausted his bank deposits leaving a zero balance. Anticipating, however a replenishment of his account soon, B, issued a postdated check with which A negotiated for the new tire. When presented, the check bounced for lack of funds. The tire company filed a criminal case against

A and B. what would be the criminal liability, if any, of each of the two accused? Explain.

A: A, who negotiated the unfunded check of B in buying a new tire for his car, may only be prosecuted for *estafa* if he was aware at the time of such negotiation that the check has no sufficient funds in the drawee bank; otherwise, he is not criminally liable.

B, who accommodated A with his check, may nevertheless be prosecuted under B.P. 22 for having issued the check, knowing at the time of issuance that he has no funds in the bank and that A will negotiate it to buy a new tire, i.e. for value. B may not be prosecuted for *estafa* because the facts indicate that he is not actuated by intent to defraud in issuing the check negotiated. Obviously, B issued the postdated check only to help A. Criminal intent or *dolo* is absent.

Effect when the check was presented for payment on the 96th day after its due date

If the payee presented the check and it bounced, even if the payee sends a written notice of dishonor to the drawer, the payee would not be entitled to a presumption that the drawer had knowledge that he has no funds when the check was issued. Under Sec. 2 of B.P. 22, the said presumption can only be utilized during the 90-day period.

Stolen check cannot give rise to a violation of B.P. 22

A stolen check cannot give rise to a violation of B.P. 22 because the check is not drawn for a valuable consideration. Such checks were not made to apply to a valid, due and demandable obligation. This, in effect, is a categorical ruling that the fact from which the civil liability of respondent may arise does not exist (*Ching vs Nicdao, GR 141181, April 27, 2007*).

EVIDENCE OF KNOWLEDGE OF INSUFFICIENT FUNDS

Necessity of actual knowledge of insufficiency of funds in B.P. 22

Knowledge of insufficiency of funds or credit in the drawee bank for the payment of a check upon its presentment is an essential element of the offense. There is a *prima facie* presumption of the existence of this element from the fact of drawing, issuing or

making a check, the payment of which was subsequently refused for insufficiency of funds. It is important to stress, however, that this is not a conclusive presumption that forecloses or precludes the presentation of evidence to the contrary (*Lim Lao v. CA, G.R. No. 119178, June 20, 1997*).

Notice of dishonor is an indispensable requisite for prosecution

To hold a person liable under B.P. 22, the prosecution must not only establish that a check was issued and that the same was subsequently dishonored, it must further be shown that accused knew at the time of the issuance of the check that he did not have sufficient funds or credit with the drawee bank for the payment of such check in full upon its presentment. This knowledge of insufficiency of funds or credit at the time of the issuance of the check is the second element of the offense. In as much as this element involves a state of mind of the person making, drawing or issuing the check which is difficult to prove, Sec. 2 of B.P. 22 creates a *prima facie* presumption of such knowledge. For this presumption to arise, the prosecution must prove the following: (a) the check is presented within ninety (90) days from the date of the check; (b) the drawer or maker of the check receives notice that such check has not been paid by the drawee; and (c) the drawer or maker of the check fails to pay the holder of the check the amount due thereon, or make arrangements for payment in full within five (5) banking days after receiving notice that such check has not been paid by the drawee. In other words, the presumption is brought into existence only after it is proved that the issuer had received a notice of dishonor and that within five days from receipt thereof, he failed to pay the amount of the check or to make arrangements for its payment. A notice of dishonor received by the maker or drawer of the check is thus indispensable before a conviction can ensue (*Dico v. Court of Appeals, G.R. No. 141669, February 28, 2005; Resterio v. People, G.R. No. 177438, September 24, 2012*).

NOTE: The presumption or *prima facie* evidence as provided in this section cannot arise, if such notice of nonpayment by the drawee bank is not sent to the maker or drawer, or if there is no proof as to when such notice was received by the drawer, since there would simply be no way of reckoning the crucial 5-day period (*Lim Lao v. CA, G.R. No. 119178, June 20, 1997; Resterio v. People, G.R. No. 177438, September 24, 2012*).

Sufficiency of verbal notice of dishonor



Verbal notice of dishonor is NOT sufficient. The notice of dishonor must be in writing. A mere oral notice or demand to pay would appear to be insufficient for conviction under the law. (*Marigomen v. People*, G.R. No. 153451, May 26, 2005; *Domagsang v. CA*, G.R. No. 139292, December 5, 2000).

If the drawer or maker is an officer of a corporation, the notice of dishonor to the said corporation is not notice to the employee or officer who drew or issued the check for and in its behalf. It is but axiomatic that notice to the corporation, which has a personality distinct and separate from the officer of the corporation, does not constitute notice to the latter (*Lao v. Court of Appeals*, G.R. No. 119178, June 20, 1997).

Receipt of notice from the drawee bank by the payee

The notice of dishonor may be sent by the offended party or the drawee bank (*Lim Lao v. CA*, G.R. No. 119178, June 20, 1997; *Azarcon v. People*, G.R. No. 185906, June 29, 2010; *Resterio v. People*, G.R. No. 177438, September 24, 2012).

Probative value of the unpaid or dishonoured check with stamped information “re: refusal to pay”

Such is prima facie evidence of:

1. The making or issuance of the check;
2. The due presentment to the drawee for payment and the dishonour thereof; and
3. The fact that the check was properly dishonored for the reason stamped on the check (*Sec. 3, BP 22*).

Prima facie evidence of knowledge of insufficient funds

GR: There is a *prima facie* evidence of knowledge of insufficient funds when the check was presented within 90 days from the date appearing on the check and was dishonored.

XPNS:

1. When the check was presented after 90 days from date
2. When the maker or drawer:
 - a. Pays the holder of the check in cash, the amount due within five banking days after receiving notice that such check has not been paid by the drawee

- b. Makes arrangements for payment in full by the drawee of such check within five banking days after notice of non-payment.

Q: Evangeline issued checks to accommodate and to guarantee the obligations of Boni in favour of another creditor. When the checks issued by Evangeline were presented for payment, the same was dishonored for the reason “Account Closed”. She was then convicted of three counts of violation of B.P. 22. On appeal, she contended that the prosecution failed to prove that she received any notice of dishonor of the subject checks from the drawee bank. Thus, according to her, in the absence of such notice, her conviction under B.P. 22 was not warranted for there was no bad faith or fraudulent intent that may be inferred on her part. May Evangeline be held liable for violation of B.P. 22 even in the absence of notice of dishonor?

A: NO. In order to create the prima facie presumption that the issuer knew of the insufficiency of funds, it must be shown that he or she received a notice of dishonor and within five banking days thereafter, failed to satisfy the amount of the check or arrange for its payment. It is only then that the drawer may be held liable for violation of the subject law. In order to be punished for the acts committed under B.P. 22, it is required there under that not only should the accused issue a check that is dishonored but likewise the accused has actually been notified in writing of the fact of dishonor. (*Cabrera v. People*, G.R. No. 150618, July 24, 1989)

Dishonor of the check due to a stop payment order

Under Sec. 1, Par. 1 of B.P. 22, it is implied that when the stop payment order is with a valid reason, there can be no violation of B.P. 22.

NOTE: Notwithstanding receipt of an order to stop payment, the drawee shall state in the notice that there were no sufficient funds in or credit with such bank for the payment in full of such check, if such be the fact (*Sec. 3, BP 22*).

Liability of drawer in cases of checks issued in payment of installments

When checks are issued in payment of installments covered by promissory notes and said checks bounced, the drawer is liable if the checks were drawn against insufficient funds, especially when the drawer, upon signing of the

promissory note, closed his account. Said check is still with consideration (*Caram Resources v. Hon. Contreras, A.M. No. MTJ-93-849, October 26, 1994*).

Liability of a person who issues guarantee checks which were dishonored in violation of the purpose of the law

The mere issuance of any kind of check regardless of the intent of the parties, i.e. whether the check is intended merely to serve as guaranty or deposit, but which check is subsequently dishonored makes the person who issued the check liable for BP 22 (*Lazaro v. CA, et.al., G.R. No. 105461, November 11, 1993*).

Q: Suppose guarantee checks were issued for the lease of certain equipment but later their equipment was pulled out. Is the drawer liable?

A: In the case of *Magno v. CA, G.R. No. 96132, June 26, 1992*, the accused issued a check of warranty deposit for lease of certain equipment. Even knowing that he has no funds or insufficient funds in the bank, he does not incur any liability under B.P. 22, if the lessor of the equipment pulled out the loaned equipment. The drawer has no obligation to make good the check because there is no more deposit or guaranty.

Violation of B.P. 22 in case of a check drawn against a dollar account

The law does not distinguish the currency involved under B.P. 22. Foreign checks, provided they are either drawn and issued in the Philippines, though payable outside thereof are within the coverage of said law (*De Villa v. CA, G.R. No. 87416, April 8, 1991*).

B.P. 22 vis-à-vis Estafa

B.P. 22	ESTAFA
Malum prohibitum.	Malum in se.
Crime against public interest.	Crime against property.
Deceit not required.	Deceit is an element.
Punishes the making or drawing of any check that is subsequently dishonored, whether issued in payment of an obligation or to merely guarantee an obligation. Issuance of a check not	The act constituting the offense is postdating or issuing a check in payment of an obligation when the offender has no funds in the bank or his funds

the non-payment of obligation is punished.	deposited therein were not sufficient to cover the amount of the check.
Violated if check is issued in payment of a pre-existing obligation.	Not violated if check is issued in payment of a pre-existing obligation.
Damage not required.	There must be damage.
Drawer is given 5 banking days to make arrangements of payment after receipt of notice of dishonour.	Drawer is given 3 days to make arrangements of payment after receipt of notice of dishonour.

Recovery from civil action arising from B.P. 22 precludes recovery from corresponding civil action arising from estafa

Double recovery is not allowed by the law. Settled is the rule that the single act of issuing a bouncing check may give rise to two distinct criminal offenses: *estafa* and violation of B.P. 22. However, the recovery of the single civil liability arising from the single act of issuing a bouncing check in either criminal case bars the recovery of the same civil liability in the other criminal action. While the law allows two simultaneous civil remedies for the offended party, it authorizes recovery in only one. In short, while two crimes arise from a single set of facts, only one civil liability attaches to it (*Rodriguez v. Hon. Ponferrada, G.R. Nos. 155531-34, July 29, 2005*).

PREFERENCE OF IMPOSITION OF FINE

Penalty that the judge may impose for violation of B. P. 22

SC-AC No. 12-2000, as clarified by SC-AC No. 13-2001, established a rule on preference in imposing the penalties. When the circumstances of the case clearly indicate good faith or clear mistake of fact without taint of negligence, the imposition of fine alone may be considered as the preferred penalty. The determination of the circumstances that warrant the imposition of fine rests upon the trial judge only. Should the judge deem that imprisonment is appropriate, such penalty may be imposed.

Being a first time offender is not the sole factor for the preferential penalty of fine alone

This circumstance is not the sole factor in determining whether he deserves the preferred



penalty of fine alone. The penalty to be imposed depends on the peculiar circumstances of each case. It is the trial court's decision to impose any penalty within the confines of the law. (*SC-AC No. 13-2001*).

NOTE: In Administrative Circular No. 12-2000, the SC modified the sentence imposed for violation of B.P. 22 by deleting the penalty of imprisonment and imposing only the penalty of fine in an amount double the amount of the check. However, by virtue of the passage of Administrative Circular No. 13-2001, the SC explained that the clear tenor of Administrative Circular No. 12-2000 is not to remove imprisonment as an alternative penalty but to lay down a rule of preference in the application of the penalties provided for in B.P. 22 (*Eduardo Vaca v. CA, G.R. No. 131714, November 16, 1998; Rosa Lim v. People, G.R. No. 130038, September 18, 2000*)

Thus, Administrative Circular No. 12-2000 establishes a rule of preference in the application of the penal provisions of B.P. 22 such that where the circumstances of both the offense and the offender clearly indicates good faith or a clear mistake of fact without taint of negligence, the imposition of fine alone should be considered as the more appropriate penalty. Needless to say, the determination of whether the circumstances warrant the imposition of fine alone rests solely upon the judge. Should the judge decide that imprisonment is the more appropriate penalty, Administrative Circular No. 12-2000 ought not to be deemed a hindrance.

Prescriptive period for violation of B.P. 22

Since BP Blg. 22 is a special law that imposes a penalty of imprisonment of not less than thirty (30) days but not more than one (1) year or by a fine for its violation, it therefor prescribes in four (4) years in accordance with the Act No. 3326. The running of the prescriptive period, however, should be tolled upon the institution of proceedings against the guilty person (*People v. Pangilinan, G.R. No. 152662, June 13, 2012*).

COMPREHENSIVE DANGEROUS DRUGS ACT RA 9165 WITH IMPLEMENTING RULES AND REGULATIONS

Dangerous Drugs (BAR 2007)

Include those listed in the Schedules annexed to the 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, and in the Schedules annexed to the 1971 Single Convention on Psychotropic Substances (*Sec. 3 (j), RA 9165*).

Controlled Precursors and Essential Chemicals

Includes those listed in Tables I and II of the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

PUNISHABLE ACTS

1. Importation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals (*Sec. 4, RA 9165*);
2. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals (*Sec. 5, RA 9165*);
3. Maintenance of a Den, Dive or Resort. (*Sec. 6, RA 9165*);
4. Employees and Visitors of a Den, Dive or Resort (*Sec. 7, RA 9165*);
5. Manufacture of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals (*Sec. 8, RA 9165*);
6. Illegal Chemical Diversion of Controlled Precursors and Essential Chemicals (*Sec. 9, RA 9165*);
7. Manufacture or Delivery of Equipment, Instrument, Apparatus, and Other Paraphernalia for Dangerous Drugs and/or Controlled Precursors and Essential Chemicals (*Sec. 10, RA 9165*);
8. Possession of Dangerous Drugs (*Sec. 11, RA 9165*) (**BAR 2015**);
9. Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs (*Sec. 12, RA 9165*);
10. Possession of Dangerous Drugs During Parties, Social Gatherings or Meetings (*Sec. 13, RA 9165*);
11. Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs During Parties, Social Gatherings or Meetings (*Sec. 14, RA 9165*);
12. Use of Dangerous Drugs (*Sec. 15, RA 9165*);
13. Cultivation or Culture of Plants Classified as Dangerous Drugs or are Sources Thereof (*Sec. 16, RA 9165*);
14. Maintenance and Keeping of Original Records of Transactions on Dangerous Drugs and/or Controlled Precursors and Essential Chemicals (*Sec. 17, RA 9165*);

15. Unnecessary Prescription of Dangerous Drugs (*Sec. 18, RA 9165*); and
16. Unlawful Prescription of Dangerous Drugs (*Sec. 19, RA 9165*);
17. Misappropriation, misapplication or failure to account for confiscated, seized or surrendered dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment including the proceeds or properties obtained from the unlawful acts by any public officer or employee (*Sec. 27, RA 9165*);
18. Benefiting from the proceeds of the trafficking of dangerous drugs, or have received any financial or material contributions or donations from natural or juridical persons found guilty of trafficking dangerous drugs by any elective local or national official (*Sec. 27, RA 9165*);
19. Planting of dangerous drugs, controlled precursors or essential chemicals as evidence (*Sec. 29, RA 9165*);
20. Consenting to or knowingly tolerating any violation of this Act by a partnership, corporation, association or any juridical entity, the partner, president, director, manager, trustee, estate administrator, or officer (*Sec. 30, Par. 1, RA 9165*).
21. Knowingly authorizing, tolerating or consenting to the use of a vehicle, vessel, aircraft, equipment or other facility, as an instrument in the importation, sale, trading, administration, dispensation, delivery, distribution, transportation or manufacture of dangerous drugs, or chemical diversion, if such vehicle, vessel, aircraft, equipment or other instrument is owned by or under the control or supervision of the partnership, corporation, association or juridical entity to which they are affiliated by a partner, president, director, manager, trustee, estate administrator, or officer (*Sec. 30, Par. 2, RA 9165*);
22. Violating any rule or regulation issued by the Dangerous Drugs Board in relation to RA 9165 (*Sec. 32, RA 9165*);
23. Issuance of False or Fraudulent Drug Test Results (*Sec. 37, RA 9165*);
24. Violation of confidentiality rule on records of drug dependents under voluntary submission (*Sec. 72, RA 9165*);
25. Failure or refusal intentionally or negligently, to appear after due notice as a witness for the prosecution in any proceedings, involving violations of this Act, without any valid reason by any member of law enforcement agencies

or any other government official and employee (*Sec. 91, RA 9165*);

26. Causing the unsuccessful prosecution and/or dismissal of the said drug-related cases, deliberately or through patent laxity, inexcusable neglect, or unreasonable delay by any government officer or employee tasked with the prosecution of said cases under this Act (*Sec. 92, RA 9165*);

ATTEMPT OR CONSPIRACY

Effect of attempt or conspiracy on the criminal liability

The accused shall be penalized by the same penalty prescribed for the commission of the same as provided under:

1. Importation of any dangerous drug and/or controlled precursor and essential chemical
2. Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical
3. Maintenance of a den, dive or resort where any dangerous drug is used in any form
4. Manufacture of any dangerous drug and/or controlled precursor and essential chemical
5. Cultivation or culture of plants which are sources of dangerous drugs.

NOTE: Where the offense of sale was not consummated, the accused should not be prosecuted under mere possession, but under Sec. 26 for attempt or conspiracy.

Illustrative case for Attempted Sale of Dangerous Drugs

The policemen conducted a buy-bust operation. After showing the substance, the sale was interrupted when the poseur-buyers immediately introduced themselves as police officers; hence, the crime was not consummated. In such case, the accused already commenced by overt acts the commission of the intended crime by showing the substance to both of the policemen but did not perform all the acts of execution which would produce such crime by reason of some cause or accident other than his own spontaneous desistance. Such cause or accident is when the policemen introduced themselves and the sale was immediately aborted. Hence, accused is guilty of attempted sale of dangerous drugs (*People v. Rolando Laylo, G.R. No. 192235, July 6, 2011*).



Appreciation of conspiracy in case of possession of dangerous drugs

The crime of conspiracy to commit possession of dangerous drugs does not exist. Simply put, the circumstance of conspiracy is not appreciated in the crime of possession of dangerous drugs under Sec. 11, Article II of RA 9165 (*Posiquit v. People*, G.R. No. 193943, January 16, 2012).

**IMPORTATION OF DANGEROUS DRUGS
AND/OR CONTROLLED PRECURSORS AND
ESSENTIAL CHEMICALS (SEC. 4)**

Any person, who, unless authorized by law, shall import or bring into the Philippines any dangerous drug, regardless of the quantity and purity involved, including any and all species of opium poppy or any part thereof or substances derived there from even for floral, decorative and culinary purposes. (BAR 1990, 1992, 2006)

DRUG PUSHING

**SALE, TRADING, ADMINISTRATION,
DISPENSATION, DELIVERY, DISTRIBUTION
AND TRANSPORTATION OF DANGEROUS
DRUGS AND/OR CONTROLLED PRECURSORS
AND ESSENTIAL CHEMICALS (SEC. 5)**

The maximum penalty shall be imposed upon:

1. Any person who organizes, manages or acts as a "financier" of any of the illegal activities (Sec. 5, Par. 6, RA 9165); and
2. Any person, who acts as a "protector/coddler" of any violator of the provisions under this Section (Sec. 5, Par. 7, RA 9165).

NOTE: Law enforcement agents who do not arrest the drug pushers or illegal possessors may be held liable as protectors or coddlers.

Elements of the crime of selling illegal drugs

1. The identity of the buyer and seller, object and consideration; and
2. The delivery of the thing sold and payment thereof (*People v. Buenaventura*, G.R. No. 184807, November 23, 2011).

Selling is any act of giving away any dangerous drug and/or controlled precursor and essential chemical whether for money or any other consideration (Sec. 3 (ii), RA 9165).

Elements that must be proven in a prosecution for illegal sale of dangerous drugs

1. That the transaction or sale took place;
2. That the *corpus delicti* or the illicit drug was presented as evidence; and
3. That the buyer and seller were identified (*People v. Edgardo Fermin*, G.R. No. 179344, August 3, 2011).

NOTE: If a person is caught selling or pushing dangerous drugs and after his arrest, they found SIMILAR dangerous drugs in his body, the person may be charged of two offenses and convicted of two offenses also: one for illegal sale and one for illegal possession.

Q: Mirondo was accused of selling illegal drugs. During trial, the testimonies of the police who conducted the buy-bust operation were used as evidence against Mirondo. The illegal substance that was confiscated during the buy-bust operation was never presented in court as evidence. Can Mirondo be convicted of selling illegal drugs under RA 9165 even though the drug substance was not presented in court?

A: NO, Mirondo cannot be convicted of the said crime. It is necessary to prove that the transaction or sale actually took place, coupled with the presentation in court of the confiscated prohibited or regulated drug as evidence. The narcotic substance itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction (*People v. Mirondo*, G.R. No. 210841, October 14, 2015).

In the crime of illegal sale of dangerous drugs, the delivery of the illicit drug to the vendee and the receipt by the seller of the marked money consummate the illegal transaction. What matters is the proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited drug, the *corpus delicti*, as evidence (*People v. Amaro*, GR No. 207517, June 1, 2016).

Q: Around 5:40 p.m., the buy-bust team proceeded to the target area. The informant singled out alias Rico Enriquez, who was in an alley conversing with his male companions, and approached him at which point these male companions left. Enriquez and the informant went over to where P02 Cruz remained standing. The informant introduced P02 Cruz to Enriquez as a friend in need of *shabu*. Enriquez asked how much he needed and P02

Cruz replied, "kasang kinyentos Jang" or P500.00. Enriquez asked them to wait, withdrew into an alley, and returned shortly to hand P02 Cruz a heat-sealed plastic sachet containing a white crystalline substance believed to be shabu. After giving Enriquez five (5) pieces of One Hundred Peso (P100.00) bills in exchange for the item, P02 Cruz lit a cigarette, the previously arranged signal for the buy-bust team to effect arrest upon consummation of the transaction. P02 Cruz grabbed Enriquez's shirt, identified himself as a police operative and informed Enriquez of the nature of his arrest. After examination, Forensic Officer Mangalip found the specimen submitted positive for Methylamphetamine Hydrochloride. Is Enriquez guilty of violating Sections 5 and 15 of Article II of RA 9165 or the Comprehensive Dangerous Drugs Act of 2002?

A: YES, the presence of the following elements required for all prosecutions for illegal sale of dangerous drugs has been duly established in the instant case: (1) proof that the transaction or sale took place; and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence. Enriquez was caught red-handed delivering one heat sealed plastic sachet containing white crystalline substance to P02 Cruz, the poseur buyer, in exchange for 500.00. P02 Cruz positively identified Enriquez in open court to be the same person who sold to him the item which upon examination was confirmed to be methylamphetamine hydrochloride or *shabu*. Upon presentation thereof in open court P02 Cruz duly identified it to be the same object sold to him by Enriquez. (*People v. Enriquez*, G.R. No. 214503, June 22, 2016).

Is the presentation of informant necessary in the prosecution for illegal sale of dangerous drugs?

In *People v. Andaya*, the confidential informant was not a police officer but he was designated to be the poseur buyer himself. The State did not present the confidential informant/poseur buyer during the trial to describe how exactly the transaction between him and Andaya had taken place. There would have been no issue against failure to present the confidential informant/poseur-buyer except that none of the members of the buy-bust team had directly witnessed the transaction, if any, between Andaya and the poseur buyer due to their being positioned at a distance at the moment of the supposed transaction. The presentation of the confidential informants as witnesses for the

Prosecution in those instances could be excused because there were poseur buyers who directly incriminated the accused. In this case, however, it was different, because the poseur buyer and the confidential informant were one and the same. Without the poseur buyer's testimony, the State did not credibly incriminate Andaya (*People v. Andaya*, G.R. No. 183700 October 13, 2014).

Consummation of crime of villegal sale of drugs may be sufficiently established even in the absence of an exchange of money

The absence of actual or completed payment is irrelevant, for the law itself penalizes the very act of delivery of a dangerous drug, regardless of any consideration. Payment of consideration is likewise immaterial in the distribution of illegal drugs (*People v. Yang* G.R. 148077, February 16, 2004).

Transporting shabu, malum prohibitum

The very act of transporting methamphetamine hydrochloride is *malum prohibitum* since it is punished as an offense under a special law. The fact of transportation of the sacks containing dangerous drugs need not be accompanied by proof of criminal intent, motive or knowledge (*People v. Morilla*, G.R. No. 189833, February 5, 2014).

No transportation of dangerous drugs if the car is stationary

"Transport" as used under the Dangerous Drugs Act is defined to mean: "to carry or convey from one place to another." The essential element of the charge is the movement of the dangerous drug from one place to another. Since the accused was arrested inside a car, when the car was not in transit such that the car was parked and stationary, then there is no transportation. The conclusion that the accused transported the drugs merely because he was in a motor vehicle when he was accosted with the drugs has no basis and is mere speculation. It is the responsibility of the prosecution to prove the element of transport of dangerous drugs, namely, that transportation had taken place, or that the accused had moved the drugs some distance (*San Juan v. People* G.R. 177191, May 30, 2011).

**MAINTENANCE OF A DEN, DIVE OR RESORT
(SEC.6)**

1. Any person or group of persons who shall maintain own or operate a den, dive or resort



where any dangerous drug is used or sold in any form or where any controlled precursor and essential chemical is used or sold in any form.

2. Any person who organizes manages or acts as a "financier" of any of the illegal activities prescribed in this Section.
3. Any person who acts as a "protector/coddler" of any violator of the provisions under this Section.

If such den, dive or resort is owned by a third person, the same shall be confiscated and escheated in favor of the government.

Requisites if the den or dive is owned by a third person:

- a. That the criminal complaint shall specifically allege that such place is intentionally used in the furtherance of the crime
- b. That the prosecution shall prove such intent on the part of the owner to use the property for such purpose
- c. That the owner shall be included as an accused in the criminal complaint

EMPLOYEES AND VISITORS OF A DEN, DIVE OR RESORT (SEC. 7)

1. Any employee of a den, dive or resort, who is aware of the nature of the place as such; and
2. Any person who, not being included in the provisions of the next preceding paragraph, is aware of the nature of the place as such and shall knowingly visit the same

MANUFACTURE OF DANGEROUS DRUGS AND/OR CONTROLLED PRECURSORS AND ESSENTIAL CHEMICALS; EQUIPMENT, INSTRUMENT, APPARATUS, AND OTHER PARAPHERNALIA FOR DANGEROUS DRUGS AND/OR CONTROLLED PRECURSORS AND ESSENTIAL CHEMICALS (SEC.8)

"Manufacture" is the production, preparation, compounding or processing of any dangerous drug and/or controlled precursor and essential chemical, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, and shall include any packaging or repackaging of such substances, design or configuration of its form, or labeling or relabeling of its container

NOTE: "Manufacture" does not include preparation, compounding, packaging or labeling of a drug or other substances by a duly authorized practitioner as an incident to his/her administration or dispensation of such drug or substance in the course of his/her professional practice including research, teaching and chemical analysis of dangerous drugs or such substances that are not intended for sale or for any other purpose (*Sec. 3(u), RA 9165*).

Prima facie proof of manufacture of any dangerous drugs

Mere presence of controlled precursor and essential chemical or laboratory equipment in the clandestine laboratory.

ILLEGAL CHEMICAL DIVERSION OF CONTROLLED PRECURSORS AND ESSENTIAL CHEMICALS (SEC. 9)

"Chemical Diversion" is the sale, distribution, supply or transport of legitimately imported, in-transit, manufactured or procured controlled precursors and essential chemicals, in diluted, mixtures or in concentrated form, to any person or entity engaged in the manufacture of any dangerous drug, and shall include packaging, repackaging, labeling, relabeling or concealment of such transaction through fraud, destruction of documents, fraudulent use of permits, misdeclaration, use of front companies or mail fraud (*Sec. 3(d), RA 9165*).

POSSESSION OF: A. Dangerous drugs (*Sec. 11*) B. Equipment, instrument, apparatus and other paraphernalia for dangerous drugs (*Sec. 12*) C. Dangerous drugs during parties, social gatherings or meetings (*Sec. 13*) D. Equipment, instrument, apparatus and other paraphernalia for dangerous drugs during parties, social gatherings or meetings (*Sec.14*)

Evidence in prosecution of illegal possession of dangerous drugs

In the prosecution for illegal possession of dangerous drugs, it must be shown that:

1. The accused is in possession of an item or an object identified to be a prohibited or a regulated drug;
2. Such possession is not authorized by law; and

3. The accused freely and consciously possessed the said drug (*People v. Mendoza, G.R. No. 186387, August 31, 2011*).

The very act of throwing away the sachet, the contents of which were later determined to be *shabu*, presupposes that accused-appellant had prior possession of it (*Castro v. People, G.R. No. 193379, August 15, 2011*).

Corpus delicti in the crime of illegal possession of dangerous drugs

The dangerous drug itself, constitutes the very *corpus delicti* of the offense and in sustaining a conviction under Republic Act No. 9165, the identity and integrity of the *corpus delicti* must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession under RA 9165 fails (*People v. Alcuizar, G.R. No. 189980, April 6, 2011*).

Constructive possession under RA 9165

While it is not necessary that the property to be searched or seized should be owned by the person against whom the search warrant is issued, there must be sufficient showing that the property is under the accused's control or possession. Constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. The prosecution must prove that the accused had knowledge of the existence and presence of the drugs in the place under his control and dominion and the character of the drugs (*Del Castillo v. People, G.R. No. 185128, January 30, 2012*).

Q: If an accused was caught in possession of shabu and marijuana in one occasion, should he be charged with, and convicted of, one offense only?

A: YES. The law does not address a case wherein an individual is caught in possession of different kinds of dangerous drugs. However, it is a well-known rule of legal hermeneutics that penal or

criminal laws are strictly construed against the State and liberally in favor of the accused. Thus, an accused may only be convicted of a single offense of possession of dangerous drugs if he or she was caught in possession of different kinds of dangerous drugs in a single occasion. If convicted, the higher penalty shall be imposed, which is still lighter if the accused is convicted of two (2) offenses having two (2) separate penalties. This interpretation is more in keeping with the intention of the legislators as well as more favorable to the accused (*David v. People, G.R. No. 181861, October 17, 2011*).

Q: If Paolo Ollero was caught in possession of any equipment, instrument, apparatus and other paraphernalia for Dangerous Drugs, what is his offense?

A: He is liable for Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs under Sec. 12 of RA 9165 and may also be liable for Use of Dangerous Drugs under Sec. 15 of the same law since possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs is *prima facie* evidence that the possessor has smoked, consumed, administered to himself, injected, ingested or used a dangerous drug and shall be presumed to have violated Sec. 15 of the law.

Q: Chuck and Kenneth were walking along Sampaloc when they saw a group of policemen approaching them. Chuck immediately handed to Kenneth, the sachet of shabu he was carrying inside his pocket. The police saw Kenneth placing the shabu inside his bag. If Kenneth was unaware that what was inside the sachet given to him was shabu, is he nonetheless liable under the Dangerous Drugs Act? (BAR 2002)

A: NO, Kenneth will not be criminally liable if he can show any proof of the absence of *animus possidendi* or present any evidence that would show that he was duly authorized by law to possess them. Possession of dangerous drugs constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused in the absence of a satisfactory explanation of such possession. Thus, the burden of evidence is shifted to the accused to explain the absence of knowledge or *animus possidendi* (*Buenaventura v. People, G.R. No. 171578, August 8, 2007; People v. Buntuyan, G.R. No. 206912, September 10, 2014*).

USE OF DANGEROUS DRUGS (SEC.15)

Elements of this crime (BAR 2005)



1. The accused was apprehended for the use of dangerous drugs;

NOTE: "Use" is any act of injecting, intravenously or intramuscularly, of consuming, either by chewing, smoking, sniffing, eating, swallowing, drinking or otherwise introducing into the physiological system of the body, and of the dangerous drugs (*Sec. 3(kk), RA 9165*).

2. He was found to be positive for use of any dangerous drugs; and
3. No other dangerous drug was found in his possession.

NOTE: Use of Dangerous Drugs under Sec. 15 of RA 9165 shall not be applicable where the person tested is also found to have in his/her possession such quantity of any dangerous drug provided for under Section 11 of the same Act, in which case the provisions stated therein shall apply (*Sec. 15, RA 9165*).

Q: Does Section 15 cover unlawful acts other than those provided for under Article II of RA 9165?

A: NO. The drug test in Section 15 does not cover persons apprehended or arrested for any other unlawful act, but only for unlawful acts listed under Article II of RA 9165. To make the provision applicable to all persons arrested or apprehended for any crime not listed under Article II is tantamount to unduly expanding its meaning, given that a drug testing will turn out to be mandatory for all persons apprehended or arrested for any crime (*Dela Cruz v. People, G.R. No. 200748, July 23, 2014*).

CULTIVATION OR CULTURE OF PLANTS CLASSIFIED AS DANGEROUS DRUGS OR SOURCES THEREOF (SEC. 16)

Cultivation as contemplated under RA 9165

"Cultivate or Culture" is any act of knowingly planting, growing, raising, or permitting the planting, growing or raising of any plant which is the source of a dangerous drug (*Sec. 3(i), RA 9165*).

NOTE: The land or portions thereof and/or greenhouses on which any of said plants is cultivated or cultured shall be confiscated and escheated in favor of the State, unless the owner can prove that he has no knowledge of such

cultivation or culture despite the exercise of due diligence on his part.

MAINTENANCE AND KEEPING OF ORIGINAL RECORDS OF TRANSACTIONS ON DANGEROUS DRUGS AND/OR CONTROLLED PRECURSORS AND ESSENTIAL CHEMICALS (SEC.17)

Persons liable

Any practitioner, manufacturer, wholesaler, importer, distributor, dealer or retailer who violates or fails to comply with the maintenance and keeping of the original records of transactions on any dangerous drug and/or controlled precursor and essential chemical in accordance with Sec. 40 of this Act.

UNNECESSARY PRESCRIPTION OF DANGEROUS DRUGS (SEC. 18)

Persons liable

Any practitioner, who shall prescribe any dangerous drug to any person whose physical or physiological condition does not require the use or in the dosage prescribed therein, as determined by the Board in consultation with recognized competent experts who are authorized representatives of professional organizations of practitioners, particularly those who are involved in the care of persons with severe pain.

UNLAWFUL PRESCRIPTION OF DANGEROUS DRUGS (SEC. 19)

Persons liable

Any person, who, unless authorized by law, shall make or issue a prescription or any other writing purporting to be a prescription for any dangerous drug.

PENALTY

Additional penalty imposed if any of the acts punishable under this Act is committed by an alien

After service of sentence, he shall be deported immediately without further proceedings (*Sec. 31, RA 9165*).

Accessory penalties imposed

Civil interdiction, suspension of political rights such as the right to vote and be voted for (*Sec. 35, RA 9165*).



Aggravating circumstances which may be considered in prosecuting cases of Dangerous Drugs

1. If the importation or bringing into the Philippines of any dangerous drugs and/or controlled precursor and essential chemicals was done through the use of diplomatic passport, diplomatic facilities or any other means involving his/her official status intended to facilitate the unlawful entry of the same (*Sec. 4, RA 9165*);
2. The sale trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpired within 100 meters from the School (*Sec. 5, RA 9165*);
3. The drug pusher uses minors or mentally incapacitated individuals as runners, couriers and messenger, or in any other capacity directly connected to the dangerous drug and/or controlled precursor and essential chemical trade (*Sec. 5, RA 9165*);
4. The victim of the offense is a minor or mentally incapacitated individual, or should a dangerous drug and/or controlled precursor and essential chemicals involved 'in any offense be the proximate cause of death of a victim (*Sec. 5, RA 9165*);
5. Any dangerous drug is administered, delivered or sold to a minor who is allowed to use the same in a den, dive or resort (*Sec. 6, RA 9165*);
6. Any dangerous drug be the proximate cause of the death of a person using the same in such den, dive or resort (*Sec. 6, RA 9165*);
7. In case the clandestine laboratory is undertaken or established under the following circumstances:
 - a. Any phase of the manufacturing process was conducted in the presence or with the help of minor/s.
 - b. Any phase of manufacturing process was established or undertaken within 100 meters of a residential, business, church or school premises.
 - c. Any clandestine laboratory was secured or protected with booby traps.
 - d. Any clandestine laboratory was concealed with legitimate business operations.
 - e. Any employment of a practitioner, chemical engineer, public official or foreigner (*Sec. 8, RA 9165*);
8. In case the person uses a minor or a mentally incapacitated individual to deliver equipment, instrument, apparatus and other

paraphernalia use for dangerous drugs (*Sec. 10, RA 9165*);

9. Any person found possessing any dangerous drug during a party, or a social gathering or meeting, or in the proximate company of at least two (2) persons (*Sec. 13, RA 9165*); and
10. Possession or having under his/her control any equipment, instrument, apparatus and other paraphernalia fit of intended for smoking, consuming, administering, injecting, ingesting or introducing any dangerous drug into the body, during parties, social gatherings or meetings, or in the proximate company of at least 2 persons (*Sec. 14, RA 9165*).

Nature of a buy-bust operation

In *People v. Sembrano* citing *People v. Agulay*, this Court held that a buy-bust operation is a form of entrapment which in recent years has been accepted as a valid and effective mode of apprehending drug pushers. Moreover, in a buy-bust operation, the violator is caught in *flagrante delicto* and the police officers conducting the same are not only authorized but also duty-bound to apprehend the violator and consequently search him for anything that may have been part of or used in the commission of the crime (*People v. Cruz, G.R. No. 187047, June 15, 2011*).

Q: Is there a valid warrantless arrest in buy bust operations?

A: YES. There is a valid warrantless arrest when a crime is actually being committed in the presence of the police officer, more known as crimes in *flagrante delicto*. A buy-bust operation is considered an entrapment in which the violator is caught in *flagrante delicto* and the officers conducting such search has not only the authority but the duty to detain the accused (*People v. Dela Cruz, GR No. 205414, April 4, 2016*).

The delivery of the contraband to the *poseur-buyer* and the receipt of the marked money consummate the buy-bust transaction *between the entrapping officers and the accused*. The presentation in court of the *corpus delicti* — the body or substance of the crime — establishes the fact that a crime has actually been committed (*People v. Edgardo Fermin, G.R. No. 179344, August 3, 2011*).

Purpose of using ultra violet powder

The only purpose for treating with ultra-violet powder the buy-bust money to be used in the actual buy-bust operation is for identification, that



is, to determine if there was receipt of the buy-bust money by the accused in exchange for the illegal drugs he was selling (*People v. Unisa y Islan*, G.R. No. 185721 September 28, 2011).

The failure of the police officers to use ultraviolet powder on the buy-bust money is not an indication that the buy-bust operation was a sham. "The use of initials to mark the money used in a buy-bust operation has been accepted by the courts" (*People v. Amansec*, G.R. No. 186131, December 14, 2011).

Prior surveillance in buy-bust operation, not a prerequisite

Prior surveillance is not a prerequisite for the validity of an entrapment or a buy-bust operation, there being no fixed or textbook method for conducting one. It is enough that the elements of the crime are proven by credible witnesses and other pieces of evidence (*People v. Villahermosa*, G.R. No. 186465, June 1, 2011).

Coordination with PDEA, not an indispensable requirement

Absence of coordination with PDEA does not render the buy bust operation invalid. In *People v. Roa*, the Supreme Court held that coordination with the PDEA is not an indispensable requirement before police authorities may carry out a buy-bust operation. While it is true that Section 86 of Republic Act No. 9165 requires the National Bureau of Investigation, PNP and the Bureau of Customs to maintain "close coordination with the PDEA on all drug related matters," the provision does not, by so saying, make PDEA's participation a condition *sine qua non* for every buy-bust operation. After all, a buy-bust is just a form of an *in flagrante* arrest. A buy-bust operation is not invalidated by mere non-coordination with the PDEA (*People v. Unisa*, G.R. No. 185721, September 28, 2011).

NOTE: The Internal Rules and Regulations implementing the law, "is silent as to the consequences of the failure on the part of the law enforcers to seek the authority of the PDEA prior to conducting a buy-bust operation. This silence cannot be interpreted as a legislative intent to make an arrest without the participation of PDEA illegal or evidence obtained pursuant to such an arrest inadmissible" (*People v. Sadablab*, G.R. No. 186392, January 18, 2012 reiterating *People v. Berdadero*).

Q: Gabuya was caught selling illegal drugs through a buy-bust operation. He contends that he cannot be held guilty because the failure of the buy-bust team to coordinate with the Philippine Drug Enforcement Agency (PDEA), among others. Is his contention meritorious?

A: No. Coordination of the buy-bust operation with the PDEA is not an indispensable element of the crimes of illegal sale and possession of dangerous drugs such as shabu, thus, it is not a fatal flaw. (*People vs. Gabuya*, G.R. No. 195245, February 16, 2015)

Presentation of the informant for conviction under RA 9165, not essential

The presentation of an informant in an illegal drugs case is not essential for the conviction nor is it indispensable for a successful prosecution because his testimony would be merely corroborative and cumulative." The informant's testimony is not needed if the sale of the illegal drug has been adequately proven by the prosecution. In *People v. Nicolas*, the Court ruled that "police authorities rarely, if ever, remove the cloak of confidentiality with which they surround their poseur-buyers and informers since their usefulness will be over the moment they are presented in court. Moreover, drug dealers do not look kindly upon squealers and informants. It is understandable why, as much as permitted, their identities are kept secret" (*People v. Amansec*, G.R. No. 186131, December 14, 2011).

Objective test in proving buy-bust operation

In *People v. Doria*, the Court laid down the "objective test" in determining the credibility of prosecution witnesses regarding the conduct of buy-bust operations. It is the duty of the prosecution to present a complete picture detailing the buy-bust operation— "from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of sale" (*People v. De la Cruz*, G.R. No. 185717, June 8, 2011).

Failure to establish *corpus delicti* under RA 9165

It is settled that the State does not establish the *corpus delicti* when the prohibited substance subject of the prosecution is missing or when substantial gaps in the chain of custody of the

prohibited substance raise grave doubts about the authenticity of the prohibited substance presented as evidence in court. Any gap renders the case for the State less than complete in terms of proving the guilt of the accused beyond reasonable doubt (*People v. Relato*, G.R. No. 173794, January 18, 2012).

IMMUNITY FROM PROSECUTION AND PUNISHMENT

Persons exempt from prosecution and punishment under RA 9165

Any person who:

1. Has violated *Sec. 7* (Employees and Visitors of a Den, Dive or Resort), *Sec. 11* (Possession of Dangerous Drugs), *Sec. 12* (Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drug), *Sec. 14* (Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs During Parties, Social Gatherings or Meetings), *Sec. 15* (Use of Dangerous Drugs), and *Sec. 19* (Unlawful Prescription of Dangerous Drugs), Article II of RA 9165.
2. Voluntarily gives information
 - a. About any violation of *Sec. 4* (Importation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals), *Sec. 5* (Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals), *Sec. 6* (Maintenance of a Den, Dive or Resort), *Sec. 8* (Manufacture of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals), *Sec. 10* (Manufacture or Delivery of Equipment, Instrument, Apparatus, and Other Paraphernalia for Dangerous Drugs and/or Controlled Precursors and Essential Chemicals), *Sec. 13* (Possession of Dangerous Drugs During Parties, Social Gatherings or Meetings), and *Sec. 16* (Cultivation or Culture of Plants Classified as Dangerous Drugs or are Sources Thereof), Article II of RA 9165
 - b. About any violation of the offenses mentioned if committed by a drug syndicate, or
 - c. Leading to the whereabouts, identities and arrest of all or any of the members thereof.
3. Willingly testifies against such persons as described above; *Provided*, that the following conditions concur:
 - a. The information and testimony are necessary for the conviction of the persons described above
 - b. Such information and testimony are not yet in the possession of the State
 - c. Such information and testimony can be corroborated on its material points
 - d. The informant or witness has not been previously convicted of a crime involving moral turpitude, except when there is no other direct evidence available for the State other than the information and testimony of said informant or witness.
 - e. The informant or witness shall strictly and faithfully comply without delay, any condition or undertaking, reduced into writing, lawfully imposed by the State as further consideration for the grant of immunity from prosecution and punishment.

NOTE: *Provided, further*, that this immunity may be enjoyed by such informant or witness who does not appear to be most guilty for the offense with reference to which his/her information or testimony was given: *Provided, finally*, that there is no direct evidence available for the State except for the information and testimony of the said informant or witness.

Applicability of RPC to RA 9165

GR: The RPC shall NOT apply to this Act.

XPN: In cases of minor offenders where the offender is a minor, the penalty for acts punishable by life imprisonment to death shall be reclusion perpetua to death.

Plea-bargaining provision is unconstitutional

Sec. 23 of RA 9165 was declared unconstitutional for being contrary to the rule-making authority of the Supreme Court (*Estipona v. Hon. Lobrigo*, G.R. No. 226679, August 15, 2017).

Prohibition on availing the benefits of probation law by those convicted for drug trafficking or pushing

Any person convicted for drug trafficking or pushing under RA 9165, regardless of the penalty imposed by the Court, cannot avail of the privilege granted by the Probation Law.



CUSTODY AND DISPOSITION OF CONFISCATED, SEIZED AND/OR SURRENDERED DANGEROUS DRUGS (SEC. 21)

Person in-charge of confiscated, seized and/or surrendered dangerous drugs

The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition.

Chain of custody

Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements RA No. 9165, defines chain of custody as "the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction" (*People v. Alejandro*, G.R. No. 176350, August 10, 2011).

NOTE: Ideally, the custodial chain would include testimony about every link in the chain or movements of the illegal drug, from the moment of seizure until it is finally adduced in evidence (*Castro v. People*, G.R. No. 193379, August 15, 2011).

Links that must be established in the chain of custody in a buy-bust situation

In *People v. Kamad*, the Court acknowledged that the following links must be established in the chain of custody in a buy-bust situation:

1. The seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;
2. The turnover of the illegal drug seized by the apprehending officer to the investigating officer;
3. The turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and
4. The turnover and submission of the marked illegal drug seized from the forensic chemist to the court (*People v. Marcelino*, G.R. No. 189325, June 15, 2011).

What the law requires is "substantial" and not necessarily "perfect adherence" to the chain of custody rule as long as it can be proven that the

integrity and the evidentiary value of the seized items were preserved as the same would be utilized in the determination of the guilt or innocence of the accused (*People v. Piad, et al*, GR No. 213607, January 25, 2016).

Q: After laboratory examination of the seized sachets of marijuana by the forensic chemist, the PNP Crime Laboratory agreed to turn over custody of the seized items to an unnamed receiving person at the City Prosecutor's Office before they were submitted as evidence to the trial court. Is there compliance to the fourth link in the chain of custody?

A: NO. The fourth link is the turnover and submission of the marked illegal drug seized from the forensic chemist to the court. It should be emphasized that the City Prosecutor's Office is not, nor has it ever been, a part of the chain of custody of seized dangerous drugs. It has absolutely no business in taking custody of dangerous drugs before they are brought before the court (*People v. De Guzman*, G.R. No. 219955, February 5, 2018).

While the procedure on the chain of custody should be perfect and unbroken, in reality, it is almost always impossible to obtain an unbroken chain. Thus, failure to strictly comply with Section 21(1), Article II of R.A. No. 9165 does not necessarily render an accused person's arrest illegal or the items seized or confiscated from him inadmissible (*Saraum v. People*, GR No. 205472, January 25, 2016).

Crucial stage in the chain of custody under RA 9165

Crucial in proving chain of custody is the marking of the seized drugs or other related items immediately after they are seized from the accused. Marking after seizure is the starting point in the custodial link; thus, it is vital that the seized contraband are immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings, obviating switching, "planting," or contamination of evidence (*People v. Mantalaba*, G.R. No. 186227, July 20, 2011).

Marking

It means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized. Long before Congress passed RA 9165, the Supreme Court has consistently held that failure of the authorities to immediately mark the seized drugs casts reasonable doubt on the authenticity of the *corpus delicti*. Marking after seizure is the starting point in the custodial link; hence, it is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference (*People v. Dela Cruz, G.R. No. 176350, August 10, 2011*).

NOTE: In *Sanchez*, the Court explained that consistency with the chain of custody rule requires that the marking of the seized items be done:

1. In the presence of the apprehended violator; and
2. Immediately upon confiscation.

In *People v. Resurreccion*, it was ruled that "marking upon immediate confiscation" does not exclude the possibility that marking can be at the police station or office of the apprehending team (*People v. Dela Cruz, G.R. No. 176350, August 10, 2011*).

Q: Bombasi was caught selling illegal drugs through a buy-bust operation. Police marked the sachet subject of the sale with "MB," corresponding to Bomabasi's initials. However, the specimen brought to PNP Crime Laboratory was marked "MB-B." Bombasi claims that the integrity of the subject shabu was not ensured and its identity was not established with moral certainty. Can he be held liable of sale of illegal drugs?

A: NO. The prosecution failed to establish the identity of the prohibited drug which constitutes the *corpus delicti* of the offense, an essential requirement in a drug-related case. The Court therefore find that the prosecution has not been able to prove the guilt of appellant beyond reasonable doubt. The presumption of regularity in the performance of official duty invoked by the prosecution and relied upon by the courts a quo cannot by itself overcome the presumption of innocence nor constitute proof of guilt beyond reasonable doubt (*People v. Bombasi G.R. No. 211608, September 7, 2016*).

Persons who must be present during physical inventory and photography of the seized items

1. Accused or the person/s from whom such items were confiscated and/or seized; OR
2. His/her representative or counsel; WITH
3. An elected public official AND
4. A representative of the National Prosecution Service OR the media (*Sec. 21(1), RA 9165 as amended by RA 10640*).

Q: In a buy-bust operation, Lescano was caught dealing marijuana. He was then brought to the City Anti-Illegal Drug Special Operation Team (CAIDSOT) office for investigation. Inside the CAIDSOT office, an inventory was allegedly conducted and photographs of the marked money and the sachet were taken. Was Section 21 (1) of the Comprehensive Dangerous Drugs Act complied with?

A: NO. While an inventory was supposed to have been conducted, this was done neither in the presence of Lescano, the person from whom the drugs were supposedly seized, nor in the presence of his counsel or representative. Likewise, not one of the persons required to be present (an elected public official, and a representative of the National Prosecution Service or the media) was shown to have been around during the inventory and photographing. The mere marking of seized items, done in violation of the safeguards of the Comprehensive Dangerous Drugs Act, cannot be the basis of a finding of guilt. By failing to establish identity of *corpus delicti*, non-compliance with Section 21 indicates a failure to establish an element of the offense of illegal sale of dangerous drugs. It follows that this non-compliance suffices as a ground for acquittal (*Lescano v. People, GR No. 214490, January 13, 2016*).

Q: In the crime of illegal possession of dangerous drugs, is the failure of the policemen to make a physical inventory and to photograph the two plastic sachets containing shabu render the confiscated items inadmissible in evidence?

A: NO. In *People v. Bralaan*, it was ruled that non-compliance by the apprehending/buy-bust team with Sec. 21 is not fatal as long as there is justifiable ground therefore, and as long as the integrity and the evidentiary value of the confiscated/seized items, are properly preserved by the apprehending officer/team. Its non-compliance will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or



innocence of the accused (*Imson v. People, G.R. No. 193003, July 13, 2011*).

In cases of dangerous drugs, what is important and necessary is for the prosecution to prove with moral certainty “that the dangerous drug presented in court as evidence against the accused be the same item recovered from his possession” (*People v. Bautista, G.R. No. 191266, June 6, 2011*).

Q: As a rule, non-compliance by the apprehending/buy-bust team with Sec. 21 of RA 9165 is not fatal as long as there is justifiable ground therefore, and as long as the integrity and the evidentiary value of the confiscated/seized items, are properly preserved by the apprehending officer/team. When will this provision not apply?

A: If there were not merely trifling lapses in the handling of the evidence taken from the accused but the prosecution could not even establish what procedure was followed by the arresting team to ensure a proper chain of custody for the confiscated prohibited drug (*People v. Ulat, G.R. No. 180504, October 5, 2011*).

No need for everyone who came into contact with the seized drugs to testify in court

There is no need for everyone who came into contact with the seized drugs to testify in court. There is nothing in RA 9165 or in its implementing rules, which requires that each and everyone who came into contact with the seized drugs to testify in court. As long as the chain of custody of the seized drug was clearly established to have not been broken and the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand (*People v. Amansec, G.R. No. 186131, December 14, 2011*).

Q: SPO1 Calupit and P02 Lobrin acted as key persons to the search conducted at the house of accused Derilo. The testimonies given by them are bereft of any evidence that show that the plastic sachets supposedly containing the shabu were ever marked, whether at the scene or at the police station, and that they were marked in the presence of the petitioner. Additionally, the Chemistry Report and the Certification of Laboratory Examination show inconsistencies with regard to the referenced markings on the plastic sachets and to the weight of the drug specimens. Thus, Derilo

contended that he should not be convicted for the manifest inconsistencies in the testimonies and failure to preserve the links in the unbroken chain of custody. Is he correct?

A: YES. To show an unbroken link in the chain of custody, the prosecution’s evidence must include testimony about every link in the chain, from the moment the item was seized to the time it is offered in court as evidence, such that every person who handled the evidence would acknowledge how and from whom it was received, where it was and what happened to it while in the witness’ possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. The same witness would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have its possession. It is from the testimony of every witness who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused (*Derilo v. People, G.R. No. 190466, April 18, 2016*).

Q: Pamela, a high school student, was caught using shabu inside the campus of the school she is attending. Who shall have the authority to apprehend her?

A: All school heads, supervisors and teachers are deemed persons in authority and empowered to apprehend, arrest or cause the apprehension or arrest of any person who shall violate any of the said provisions of Article II of Dangerous Drugs Act, pursuant to Section 5, Rule 113 of the Rules of Court (*Sec. 44, IRR of RA 9165*).

Instances when the school heads, supervisors and teachers deemed to be persons in authority in the apprehension, arrest or cause of arrest of person violating the Act

They shall be deemed persons in authority if they are in the school or within its immediate vicinity, or even beyond such immediate vicinity if they are in attendance at any school or class function in their official capacity as school heads, supervisors, and teachers (*Sec. 44, IRR of RA 9165*).

Duties of school heads, supervisors and teachers if they caught a person violating the provisions of RA 9165

1. They shall affect the arrest of any person violating Article II of the Act and turn over the investigation of the case to the PDEA;
2. They may summon the services of other law enforcement agencies to arrest or cause the apprehension or arrest of persons violating Article II of the Act;
3. They shall be trained on arrest and other legal procedures relative to the conduct of arrest of violators of the Act along with student leaders and Parents Teachers Association (PTA) officials; and
4. They shall refer the students or any other violators found to be using dangerous drugs to the proper agency/office (*Sec. 44, IRR of RA 9165*).

Promotion of "drug-free workplaces"

The drug-free workplaces are promoted by:

1. A National Drug-Free Workplace Abuse Prevention Program shall be formulated by a tripartite Task Force composed of representatives from the DOLE, workers' and employers' groups.
2. The Secretary of the DOLE shall issue a Department Order creating a Task Force consisting of tripartite and other agencies to formulate policies and strategies for the purpose of developing a National Action Agenda on drug abuse prevention in the workplace. Pursuant to the declared policy of the State and the national workplace policy, the DOLE shall issue a Department Order (DO) requiring all private companies to adopt and implement drug abuse prevention programs in the workplace, including the formulation of company policies.
3. Pursuant to the functions of the Board under Section 81 (a) of the Act, the existing Civil Service rules and policies needed to respond to drug abuse in the public sector shall be adopted (*Sec. 47, IRR of RA 9165*).

Guidelines for the National Drug-Free Workplace Program to be formulated by the Board and the DOLE

The Task Force shall develop a comprehensive National Drug-Free Workplace Program in accordance with the following guidelines:

1. All private sector organizations with ten (10) or more personnel shall implement a drug abuse prevention program.
 - a. The workplace program shall include advocacy and capability building and other preventive strategies including but

not limited to: company policies, training of supervisors/managers, employee education, random drug testing, employee assistance program and monitoring and evaluation

- b. The workplace program shall be integrated in the safety and health programs.
2. DOLE and labor and employers' groups shall also encourage drug-free policies and programs for private companies with nine (9) workers or less.
3. Any officer or employee found positive for use of dangerous drugs shall be dealt with administratively which shall be a ground for suspension or termination, subject to the provisions of Article 282 of Book VI of the Labor Code.
4. Private sector organizations may extend the drug education program to the employees/personnel and immediate families to contribute in the promotion of a healthy drug-free family, community and society.
5. All private sector organizations shall display in a conspicuous place a billboard or streamer with a standard message of "THIS IS A DRUG-FREE WORKPLACE: LET'S KEEP IT THIS WAY!" or such other messages of similar import (*Sec. 48, IRR of RA 9165*).

Inclusion of workplace drug abuse policies and programs as part of CBA

It is required that all labor unions, federations, associations; or organizations in cooperation with the respective private sector partners shall include in their collective bargaining or any similar agreements, joint continuing programs and information campaigns for the laborers similar to the programs provided under Section 47 of the Act with the end in view of achieving a drug-free workplace (*Sec. 49, IRR of RA 9165*).

Procedure to be followed in abatement of drug related public nuisances

Any place or premises which have been used on two or more occasions as the site of the unlawful sale or delivery of dangerous drugs, or used as drug dens for pot sessions and other similar activities, may be declared to be a public nuisance, and such nuisance may be abated, pursuant to the following procedures:

1. Any city or municipality may, by ordinance, create an administrative board to hear complaints regarding the nuisances, to be composed of the following:



- a. City/Municipal Health Officer as chairperson;
 - b. City/Municipal Legal Officer as member, provided that in cities/municipalities with no Legal Officer, the City/Municipal Administrator shall act as member; and
 - c. The Local Chief of Police as member.
2. Any employee, officer, or resident of the city or municipality may bring a complaint before the administrative board after giving not less than three (3) days written notice of such complaint to the owner of the place or premises at his/her last known address;
 3. Within three (3) days from receipt of the complaint, a hearing shall then be conducted by the administrative board, with notice to both parties, and the administrative board may consider any evidence submitted, including evidence of general reputation of the place or premises;
 4. The owner/manager of the premises or place shall also be given an opportunity to present any evidence in his/her defense;
 5. After hearing, the administrative board may declare the place or premises to be a public nuisance; and
 6. The hearing shall be terminated within ten (10) days from commencement (*Sec. 52, IRR of RA 9165*).

Persons sharing the cost of treatment and rehabilitation of a drug dependent who voluntarily submitted himself

The parent, spouse, guardian or any relative within the fourth degree of consanguinity of any person who is confined under the voluntary submission program or compulsory submission program shall share the cost of treatment and rehabilitation of a drug dependent (*Sec. 74, IRR of RA 9165*).

If the dependent has no parent, spouse, guardian or relative within fourth degree of consanguinity

In case a dependent has no parent, spouse, guardian or relative within the fourth degree of consanguinity, his/her rehabilitation shall be through the auspices of any government rehabilitation center (*Sec. 74, IRR of RA 9165*).

Factors in determining costs for the sharing in cost of treatment and rehabilitation

In government rehabilitation centers, the following factors shall be taken into consideration in determining the share of the cost:

1. Family income;
2. Capacity of the province/city/municipality based on their income classification;
3. The cost of treatment and rehabilitation based on a center's facilities, programs and services (*Sec. 74, IRR of RA 9165*).

If the family income is within the poverty threshold

A family whose income is within poverty threshold shall be fully subsidized by the government (*Sec. 74, IRR of RA 9165*).

Duties of DOH in the treatment and rehabilitation of drug dependent

To ensure proper treatment and rehabilitation of drug dependents, the DOH shall perform the following:

- a. Formulate standards and guidelines for the operation and maintenance of all treatment and rehabilitation centers nationwide;
- b. Develop a system for monitoring and supervision of all drug rehabilitation centers nationwide;
- c. Create programs which will advocate for the establishment of LGU-assisted rehabilitation facilities in each province;
- d. Submit to the Department of Budget and Management (DBM) a budget for the establishment, and operation of drug rehabilitation centers; and
- e. Facilitate the turn-over of all the rehabilitation centers from the PNP and NBI thru a Memorandum of Agreement that shall be signed within sixty (60) days after approval of this IRR (*Sec. 75, IRR of RA 9165*).

**PROGRAM FOR TREATMENT AND
REHABILITATION OF DRUG DEPENDENTS
(ARTICLE VIII)**

Submission for treatment and rehabilitation of a drug dependent who is found guilty of the use of drugs

A drug dependent who is found guilty of the use of dangerous drugs may voluntarily submit himself for treatment and rehabilitation. The drug dependent may, by himself/herself or through his/her parent, spouse, guardian or relative within the fourth degree of consanguinity or affinity, apply to the Board or its duly recognized representative, for treatment and rehabilitation of the drug dependency.

Upon such application, the Board shall bring forth the matter to the Court which shall order that the applicant be examined for drug dependency (*Sec. 54, RA 9165*).

Compulsory confinement

Notwithstanding any law, rule and regulation to the contrary, any person determined and found to be dependent on dangerous drugs shall, upon petition by the Board or any of its authorized representative, be confined for treatment and rehabilitation in any Center duly designated or accredited for the purpose.

A petition for the confinement of a person alleged to be dependent on dangerous drugs to a Center may be filed by any person authorized by the Board with the Regional Trial Court of the province or city where such person is found (*Sec. 61, RA 9165*).

Length of confinement for treatment and rehabilitation by the drug dependent

Confinement in a Center for treatment and rehabilitation shall not exceed one (1) year, after which time the Court, as well as the Board, shall be apprised by the head of the treatment and rehabilitation center of the status of said drug dependent and determine whether further confinement will be for the welfare of the drug dependent and his/her family or the community (*Sec. 54, RA 9165*).

Exemption from criminal liability of a drug dependent who is under the voluntary submission program and upon release from confinement in the center

A drug dependent who is under the voluntary submission program and is finally discharged from confinement in the Center be exempt from criminal liability if:

1. He/she has complied with the rules and regulations of the center, the applicable rules and regulations of the Board, including the after-care and follow-up program for at least eighteen (18) months following temporary discharge from confinement in the Center
2. He/she has never been charged or convicted of any offense punishable under this Act, the Dangerous Drugs Act of 1972 or Republic Act No. 6425, as amended; the Revised Penal Code, as amended, or any special penal laws
3. He/she has no record of escape from a Center

4. He/she poses no serious danger to himself/herself, his/her family or the community by his/her exemption from criminal liability (*Sec. 55, RA 9165*).

COMPREHENSIVE LAW ON FIREARMS AND AMUNITION

PD 1866, AS AMENDED BY RA 8294 AND RA 10591

Standards and requisites for issuance of and obtaining a license to own and possess firearms

1. Applicant must be a Filipino citizen;
2. He must be at least 21 years old;
3. Has gainful work, employment, occupation or business or has filed an Income Tax Return for the preceding year as proof of income, profession, business or occupation; and
4. He shall submit the following certification issued by appropriate authorities attesting the following:
 - a. The applicant has not been convicted of any crime involving moral turpitude;
 - b. The applicant has passed the psychiatric test administered by a PNP-accredited psychologist or psychiatrist;
 - c. The applicant has passed the drug test conducted by an accredited and authorized drug testing laboratory or clinic;
 - d. The applicant has passed a gun safety seminar which is administered by the PNP or a registered and authorized gun club;
 - e. The applicant has filed in writing the application to possess a registered firearm which shall state the personal circumstances of the applicant;
 - f. The applicant must present a police clearance from the city or municipality police office; and
 - g. The applicant has not been convicted or is currently an accused in a pending criminal case before any court of law for a crime that is punishable with a penalty of more than 2 years. (*Sec. 4, RA 10591*).

NOTE: An acquittal or permanent dismissal of a criminal case before the courts of law shall qualify the accused thereof to qualify and acquire a license (*Sec. 4, RA 10591*).



Carrying of firearms outside of residence or place of business

A permit to carry firearms outside of residence shall be issued by the Chief of the PNP or his duly authorized representative to any qualified person whose life is under actual threat or his/her life is in imminent danger due to the nature of his/her profession, occupation or business.

The burden is on the applicant to prove that his/her life is under actual threat by **submitting a threat assessment certificate from the PNP** (Sec. 7, RA 10591).

Professionals that are considered to be in imminent danger due to the nature of their profession, occupation or business

- a. Members of the Philippine Bar;
- b. Certified Public Accountants;
- c. Accredited Media Practitioners;
- d. Cashiers, Bank Tellers;
- e. Priests, Ministers, Rabbi, Imams;
- f. Physicians and Nurses;
- g. Engineers; and
- h. Businessmen, who by the nature of their business or undertaking, are exposed to high risk of being targets of criminal elements (Sec. 7, RA 10591).

Firearms that may be registered

Only small arms may be registered by licensed citizens or licensed juridical entities for ownership, possession and concealed carry.

Small arms

Small arms are firearms intended primarily designed for individual use or that which is generally considered to mean a weapon intended to be fired from the hand or shoulder, which are not capable of fully automatic bursts of discharge (Sec. 3(dd), RA 10591).

Possession of light weapon

A light weapon shall be lawfully acquired or possessed exclusively by the AFP, PNP and other law enforcement agencies authorized by the President in the performance of their duties.

Light weapons

- a. **Class A Light weapons** – referring to self-loading pistols, rifles, and carbines,

submachine guns, assault rifles and light machine guns not exceeding caliber 7.62MM which have fully automatic mode; and

- b. **Class-B Light weapons** - referring to weapons designed for use by two (2) or more persons serving as a crew, or rifles and machine guns exceeding caliber 7.62MM such as heavy machine guns, handheld under barrel and mounted grenade launchers, portable anti-aircraft guns, portable anti-tank guns, recoilless rifles, portable launchers of anti-tank missile and rocket systems, portable launchers of anti-aircraft missile systems, and mortars of a caliber of less than 100MM (Sec. 3(t), RA 10591).

NOTE: However, private individuals who already have licenses to possess Class-A light weapons upon the effectivity of RA 10591 shall not be deprived of the privilege to continue possessing the same and renewing the licenses therefor, for the sole reason that these firearms are Class “A” light weapons.

Types of license

A qualified individual may be issued the appropriate license under the following categories:

- a. *Type 1 license* – allows a citizen to own and possess a maximum of two (2) registered firearms;
- b. *Type 2 license* – allows a citizen to own and possess a maximum of five (5) registered firearms;
- c. *Type 3 license* – allows a citizen to own and possess a maximum of ten (10) registered firearms;
- d. *Type 4 license* – allows a citizen to own and possess a maximum of fifteen (15) registered firearms; and
- e. *Type 5 license* – allows a citizen, who is a certified gun collector, to own and possess more than fifteen (15) registered firearms.

For Types 1 to 5 licenses, a vault or a container secured by lock and key or other security measures for the safekeeping of firearms shall be required.

For Types 3 to 5 licenses, the citizen must comply with the inspection and bond requirements (Sec. 9).

Acquisition or purchase and sale of firearms and ammunition

Firearms and ammunition may only be acquired or purchased from authorized dealers, importers or local manufacturers and may be transferred or sold only from a licensed citizen or licensed juridical entity to another licensed citizen or licensed juridical entity.

During election periods, the sale and registration of firearms and ammunition and the issuance of the corresponding licenses to citizens shall be allowed on the condition that the transport or delivery thereof shall strictly comply with the issuances, resolutions, rules and regulations promulgated by the Commission on Elections (*Sec. 21, RA 10591*).

Death or disability of the holder of a firearm licensee

Upon the death or legal disability of the holder of a firearm license, it shall be the duty of his/her next of kin, nearest relative, legal representative, or other person who shall knowingly come into possession of such firearm or ammunition, to deliver the same to the FEO of the PNP or Police Regional Office, and such firearm or ammunition shall be retained by the police custodian pending the issuance of a license and its registration (*Sec. 26, RA 10591*).

NOTE: The failure to deliver the firearm or ammunition within six (6) months after the death or legal disability of the licensee shall render the possessor liable for illegal possession of the firearm.

PUNISHABLE ACTS

1. Unlawful acquisition or possession of firearms and ammunition. (*Sec. 28, RA 10591*).
2. Use of loose firearm in the commission of a crime (*Sec. 29, RA 10591*).

“Loose firearm” refers to an unregistered firearm, an obliterated or altered firearm, firearm which has been lost or stolen, illegally manufactured firearms, registered firearms in the possession of an individual other than the licensee and those with revoked licenses in accordance with the rules and regulations (*Sec. 3(v), RA 10591*).
3. Carrying the registered firearm outside his/her residence without any legal authority therefore or absence of permit to carry outside of residence (*Sec. 31, RA 10591*).

4. Unlawful manufacture, importation, sale or disposition of firearms or ammunition or parts thereof, machinery, tool or instrument used or intended to be used in the manufacture of firearms, ammunition or parts thereof. (*Sec. 32, RA 10591*).
5. Arms smuggling (it refers to the import, export, acquisition, sale, delivery, movement or transfer of firearms, their parts and components and ammunition, from or across the territory of one country to that of another country which has not been authorized in accordance with domestic law in either or both country/countries) (*Sec. 33, RA 10591*).
6. Tampering, obliteration, or alteration of firearms identification (*Sec. 34, RA 10591*).
7. Use of an imitation firearm – This refers to a replica of a firearm or other device that is so substantially similar in coloration and overall appearance to an existing firearm as to lead a reasonable person to believe that such imitation firearm is a real firearm. An imitation firearm used in the commission of a crime shall be considered as a real firearm and the person who committed the crime shall be punished in accordance with RA 10591 (*Sec. 35, RA 10591*).
8. Violating the procedure regarding firearms in *custodia legis* - During the pendency of any case filed in violation of RA 10519, seized firearm, ammunition, or parts thereof, machinery, tools or instruments shall remain in the custody of the court. If the court decides that it has no adequate means to safely keep the same, the court shall issue an order to turn over to the PNP Crime Laboratory such firearm, ammunition, or parts thereof, machinery, tools or instruments in its custody during the pendency of the case and to produce the same to the court when so ordered. No bond shall be admitted for the release of the firearm, ammunition or parts thereof, machinery, tool or instrument (*Sec. 36, RA 10591*).
9. Planting evidence – Willfully and maliciously inserting, placing, and/or attaching directly or indirectly, through any overt or covert act, any firearm, or ammunition or parts thereof in the person, house, effects or in the immediate vicinity of an innocent individual for the purpose of implication or incriminating the person or imputing the commission of any violation of the provision of RA 10591 to said individual (*Sec. 38, RA 10591*).
10. Failure to notify lost or stolen firearm or light weapon (*Sec. 40, RA 10591*).

11. Illegal transfer/registration of firearms – transferring possession of any firearm to any person who has not yet obtained or secured the necessary license or permit thereof (*Sec. 41, RA 10591*).

Grounds for revocation, cancellation or suspension of license or permit

The Chief of the PNP or his/her authorized representative may revoke, cancel or suspend a license or permit on the following grounds:

- a. Commission of a crime or offense involving the firearm, ammunition, of major parts thereof;
- b. Conviction of a crime involving moral turpitude or any offense where the penalty carries an imprisonment of more than six (6) years;
- c. Loss of the firearm, ammunition, or any parts thereof through negligence;
- d. Carrying of the firearm, ammunition, or major parts thereof outside of residence or workplace without, the proper permit to carry the same;
- e. Carrying of the firearm, ammunition, or major parts thereof in prohibited places;
- f. Dismissal for cause from the service in case of government official and employee;
- g. Commission of any of the acts penalized under Republic Act No. 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002”;
- h. Submission of falsified documents or misrepresentation in the application to obtain a license or permit;
- i. Noncompliance of reportorial requirements; and
- j. By virtue of a court order (*Sec. 39, RA 10591*).

ELEMENTS

1. The existence of the subject firearm; and
2. The fact that the accused who possessed the same does not have the corresponding license for it. (*Evangelista v. People, G.R. No. 163267, May 5, 2010; People v. Eling, G.R. No. 178546, April 30, 2008*).

Ownership is not essential

The rule is that ownership is not an essential element of illegal possession of firearms and ammunition. What the law requires is merely possession which includes not only actual physical possession but also constructive possession or the subjection of the thing to one's control and management (*People v. De Gracia, G. R. Nos. 102009-10 July 6, 1994*).

OMNIBUS ELECTION CODE (BP 881)

Gun Ban

An election offense is committed by any person who, although possessing a permit to carry firearms, carries any firearms outside his residence or place of business during the election period, unless authorized in writing by the Commission: Provided, that a motor vehicle, water or air craft shall not be considered a residence or place of business or extension hereof.

NOTE: This prohibition shall not apply to cashiers and disbursing officers while in the performance of their duties or to persons who by nature of their official duties, profession, business or occupation habitually carry large sums of money or valuables (*Sec. 261(q), BP 881*).

Elements

1. The person is bearing, carrying, or transporting firearms or other deadly weapons;
2. Such possession occurs during the election period; and
3. The weapon is carried in a public place (*Sec. 32, Par. 1, RA 7166*).

NOTE: Only regular members or officers of the Philippine National Police, the Armed Forces of the Philippines and other enforcement agencies of the Government who are duly deputized in writing by the Commission for election duty may be authorized to carry and possess firearms during the election period: Provided, that, when in the possession of firearms, the deputized law enforcement officer must be:

- a. In full uniform showing clearly and legibly his name, rank and serial number which shall remain visible at all times; and
- b. In the actual performance of his election duty in the specific area designated by the Commission (*Sec. 32, Par. 2, RA 7166*).

Penalties

Any person found guilty of any election offense shall be punished with imprisonment of not less than one (1) year but not more than six (6) years and shall not be subject to probation. In addition, the guilty party shall be sentenced to suffer disqualification to hold public office and deprivation of the right of suffrage. If he is a foreigner, he shall be sentenced to deportation which shall be enforced after the prison term has been served. Any political party found guilty shall

be sentenced to pay a fine of not less than ten thousand pesos, which shall be imposed upon such party after criminal action has been instituted in which their corresponding officials have been found guilty (*Sec. 264, BP 881*).

Accused can be simultaneously charged for violation of RA 10591 and BP 881

NOTE: In RA 10591, the burden to prove the negative allegation that the accused has no license or permit to carry a firearm lies with the prosecution. In BP 881, the burden to adduce evidence that the accused is exempt from COMELEC Gun Ban lies with the accused (*Abenes v. CA, G.R. No. 156320, February 14, 2007*)

PD 1866 (as amended by RA 8294) vis-à-vis RA 10591

PD 1866, AS AMENDED BY RA 8294		RA 10591	
<p>In Section 1, a person is not liable for the violation of the old firearms law if he also committed another crime. What is punished is the "other crime" regardless if the use or possession of firearms is inherent or necessary in the commission of that "other crime." If homicide or murder is committed with the use of unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance.</p>		<p>In Section 29, the use of a loose firearm, when inherent in the commission of a crime punishable under the RPC or other special laws, shall be considered as an aggravating circumstance.</p> <p>Otherwise, the use or possession of loose firearms and violation of other penal law shall be treated as distinct crimes and will thus be punished separately.</p>	
<p>If there was no other crime committed, the penalty under Section 1 shall be imposed.</p>		<p>If the crime committed with the use of a loose firearm is penalized by the law with a maximum penalty which is LOWER THAN that prescribed in the new law for illegal possession of firearm, the penalty for illegal</p>	

	<p>possession of firearm shall be imposed in lieu of the penalty for the other crime charged. -If the crime committed with the use of a loose firearm is penalized by the law with a maximum penalty which is EQUAL to that imposed under the new law for illegal possession of firearms, the penalty of prision mayor in its minimum period shall be imposed in addition to the penalty for the crime punishable under the RPC or other special laws of which s/he is found guilty.</p>
<p>The acts penalized are as follow:</p> <ol style="list-style-type: none"> 1. Unlawful manufacture, sale acquisition, disposition or possession of firearms or ammunition or instruments used or intended to be used in the manufacture of firearms of ammunition; 2. Unlawful manufacture, sale, acquisition, disposition or possession of explosives; 3. Tampering of firearm's serial number; 4. Repacking or altering the composition of lawfully manufactured explosives; 5. Unauthorized issuance of authority to carry firearm and/or ammunition outside of residence. 	<p>Acts punishable:</p> <ol style="list-style-type: none"> 1. Unlawful acquisition, or possession of firearms, and ammunition; 2. Use of loose firearm in the commission of a crime; 3. Absence of permit to carry outside of residence; 4. Unlawful manufacture, importation, sale or disposition of firearms or ammunition or parts thereof; 5. Arms smuggling; 6. Tampering, obliteration, or alteration of firearms identification; 7. Use of imitation firearm; 8. Violation of the procedure for firearms in <i>custodia legis</i>; 9. Planting evidence; 10. Failure to notify lost or stolen firearm or light weapon 11. Illegal transfer/



	registration of firearms.
IN BOTH LAW, if the violation is in furtherance of or incident to or in connection with the crime of rebellion or insurrection, or attempted coup d'etat , such violation shall be absorbed as an element of the crime of rebellion or insurrection or attempted coup d'etat .	

INDETERMINATE SENTENCE LAW ACT 4103, AS AMENDED

APPLICATION ON THE IMPOSED SENTENCE

Purpose

To uplift and redeem valuable human material, and prevent unnecessary and excessive deprivation of personal liberty and economic usefulness (*People v. Ducosin, G.R. No. L-38332, December 14, 1933*).

Imposition of minimum or maximum term

The term minimum refers to the duration of the sentence which the convict shall serve as a minimum to be eligible for parole. The term maximum refers to the maximum limit of the duration that the convict may be held in jail. For special laws, it is anything within the inclusive range of prescribed penalty. The determination of the minimum and maximum terms is left entirely to the discretion of the trial court, the exercise of which will not be disturbed on appeal unless there is a clear abuse (*People v. Medroso, G.R. No. L-37633 January 31, 1975*).

Rules in imposing a penalty under the indeterminate sentence law (BAR 1999, 2005, 2009, 2010, 2013)

When penalty is imposed by RPC:

1. *The Maximum Term* – is that which in view of the attending circumstances could be properly imposed under the RPC.
2. *The Minimum Term* – is within the range of the penalty next lower to that prescribed by the RPC.

Prescribed penalty is what the penalty is without looking at the circumstances. As opposed to

imposed penalty which takes into account the circumstances.

Q: An agonizing and protracted trial having come to a close, the judge found A guilty beyond reasonable doubt of homicide and imposed on him a straight penalty of six (6) years and one (1) day of prision mayor. the public prosecutor objected to the sentence on the ground that the proper penalty should have been twelve (12) years and one (1) day of reclusion temporal. the defense counsel chimed in, contending that application of the indeterminate sentence law should lead to the imposition of a straight penalty of six (6) months and one (1) day of prision correccional only. Who of the three is on the right track? (BAR 2010)

None of the contentions is correct because the Indeterminate Sentence Law (Act 4103, as amended) has not been followed.

The imposition of penalty for the crime of homicide, which is penalized by imprisonment exceeding one (1) year and is divisible, is covered by the Indeterminate Sentence Law. The said law requires that the sentence in this case should reflect a minimum term for purposes of parole, and a maximum term fixing the limit of the imprisonment. Imposing a straight penalty is incorrect.

When penalty is imposed by Special Penal Law (BAR 1994)

3. *Maximum Term* – must not exceed the maximum term fixed by said law.
4. *Minimum Term* – must not be less than the minimum term prescribed by the same. (BAR 2003)

Bruno was charged with homicide for killing the 75-year old owner of his rooming house. The prosecution proved that Bruno stabbed the owner causing his death, and that the killing happened at 10 in the evening in the house where the victim and Bruno lived. Bruno, on the other hand, successfully proved that he voluntarily surrendered to the authorities; that he pleaded guilty to the crime charged; that it was the victim who first attacked and did so without any provocation on his (Bruno's) part, but he prevailed because he managed to draw his knife with which he stabbed the victim. The penalty for homicide is reclusion temporal. Assuming a judgment of conviction and after considering the attendant

circumstances, what penalty should the judge impose? (BAR 2013)

Bruno should be sentenced to an indeterminate sentence penalty of **arresto mayor in any of its period as minimum to prision correccional in its medium period as maximum**. Bruno was entitled to the privileged mitigating circumstances of incomplete self-defense and the presence of at least two ordinary mitigating circumstances (voluntary surrender and plea of guilt) without any aggravating circumstance under Art. 69 and 64(5) of the RPC respectively, which lowers the prescribed penalty for homicide which is reclusion temporal to *prision correccional*.

Further Explanation

In this kind of question, the Bar examiner wants you to determine whether there was self-defense or not. The problem provides that the defense was able to prove that it was the man who first attacked Bruno; therefore, there was unlawful aggression. But there was no provocation coming from Bruno, therefore, there was a lack of sufficient provocation. So two elements of self-defense are present.

Q: How about the 3rd element of self-defense, reasonable necessity of the means employed to prevent or repel the attack, is this present?

The 3rd element of self-defense is absent because based on the facts proven by Bruno, although it was the man who attacked Bruno first, he prevailed upon the man because he made use of a knife and stabbed the man. While the man attacked Bruno by means of his fist, it is not reasonably necessary for Bruno to make use of a knife in killing the man. So what we have is an incomplete self-defense.

Under paragraph 1 of Article 13, in case of incomplete self-defense, if aside from unlawful aggression, another element is present but not all, we have a privileged mitigating circumstance. Therefore, this *incomplete self-defense shall be treated as a privileged mitigating circumstance*.

The prosecution was able to prove that the man is 75 years old. Would you consider the aggravating circumstance of disrespect of age?

No. Even if Bruno killed the said 75 year-old man, there was no showing in the problem that he disrespected the age of the man.

Would you consider nighttime as an aggravating circumstance?

No. Even if the problem says that the crime was committed at 10 in the evening, it did not say whether the house was lighted or not. There was also no showing that the offender deliberately sought nighttime to commit the crime.

Would you consider dwelling?

No. In the said dwelling both Bruno and the victim are residing. Therefore, dwelling is not an aggravating circumstance because both of them are living in the same dwelling. It cannot be said that when Bruno killed the man, he disrespected the dwelling of the said man. Therefore, we have *no aggravating circumstance present*.

Take note that Bruno was able to prove voluntary surrender, voluntary plea of guilt, and then we have an incomplete self-defense — a privileged mitigating circumstance.

Applying these conclusions, we have *two (2) ordinary mitigating circumstances with one (1) privileged mitigating circumstance and with no aggravating circumstance*.

How do we compute the penalty?

1. *Consider first the Privileged Mitigating Circumstance.*

Whenever there is a privileged mitigating circumstance present, apply it first before computing the penalty. In this example, since we have incomplete self-defense, you have to lower the penalty by one degree because it is a privileged mitigating circumstance. Thus, instead of *reclusion temporal*, it will become *prision mayor*.

2. *Consider the Ordinary Mitigating Circumstance.*

So now, there are two ordinary mitigating circumstances with no aggravating circumstance. Article 64 provides that when there are two mitigating with no aggravating, lower the penalty by one degree. Therefore, if you lower it by one degree, it is now *prision correccional*.

3. *Determine the Maximum Sentence after considering all justifying, exempting, mitigating, and aggravating circumstances, if any.*



You have already applied everything so it will become *prision correccional in its medium period*.

4. *Determine the minimum term of the sentence.*

You go one degree lower and that is *arresto mayor*. Therefore, *arresto mayor in its medium period* (or any period in the discretion of the court) is the minimum term of the sentence.

COVERAGE

Application of Indeterminate Sentence

Indeterminate sentence applies mandatorily to violations of both the RPC and special laws where imprisonment would exceed one (1) year, and where the penalty is divisible (*Sec. 1, Act 4103*).

Persons disqualified from availing the benefits of the Indeterminate Sentence Law (BAR 1990, 2005)

The Indeterminate sentence law shall **NOT** apply to persons:

1. Convicted of:
 - a. An offense punishable with death penalty, *reclusion perpetua* or life imprisonment
 - b. Treason, conspiracy or proposal to commit treason
 - c. Misprision of treason, rebellion, sedition, espionage
 - d. Piracy;
2. Habitual delinquents;
3. Those who shall have escaped from confinement or evaded sentence; **(BAR 2007)**
4. Granted conditional pardon by the Chief Executive and shall have violated the term (condition) thereto; **(BAR 1999)**
5. Whose maximum term of imprisonment does not exceed one year; **(BAR 2005)**
6. Who are already serving final judgment upon the approval of the Indeterminate Sentence Law (*Sec. 2, Act 4103*).

Although the penalty prescribed for the felony committed is death or *reclusion perpetua*, if after considering the attendant circumstances, the imposable penalty is *reclusion temporal* or less, the Indeterminate Sentence Law applies.

Recidivists, who are not habitual delinquents, are entitled to the benefit of the Indeterminate Sentence Law (*People v. Jaranilla, G.R. No. L-28547, February 22, 1974*)

CONDITIONS OF PAROLE

Prisoner qualified for release on parole

Prisoner is qualified for release on parole whenever he shall:

1. Have served the minimum penalty imposed upon him;
2. Appear to the board of indeterminate sentence, from the reports of the prisoner's work and conduct, and from the study and investigation made by the board itself that:
 - a. Fitted by his training for release;
 - b. Reasonable probability that such prisoner will live and remain at liberty without violating the law;
 - c. Release will not be incompatible with the welfare of society (*Sec. 5 of the Indeterminate Sentence Law*).

NOTE: If a prisoner, even if already served the minimum sentence but the Board found out that he is not fit for release on parole, he shall continue to serve until the end of the maximum term.

Prisoner on parole is entitled to final release and discharge

Prisoner on parole is entitled to final release and discharge if during the period of surveillance such paroled prisoner shall:

1. Show himself to be a law-abiding citizen; and
2. Not violate any law (*Section 6 of the indeterminate Sentence Law*).

NOTE: The Board may issue a final certification in his favor, for his final release and discharge (*Sec. 6*).

Consequences when the prisoner violates any of the conditions of his parole

When the paroled prisoner shall violate any of the conditions of his parole, he may be:

1. Rearrested; and
2. Thereafter, he shall serve the remaining unexpired portion of the maximum sentence for which he was originally committed to prison (*Sec. 8 of the Indeterminate Sentence Law*).

**JUVENILE JUSTICE AND WELFARE ACT
RA 9344, AS AMENDED BY RA 10630
IN RELATION TO PD 603**

Liberal Construction of the Rules

In case of doubt, the interpretation of any of the provisions of this Act, including its implementing rules and regulations (IRRs), shall be construed liberally in favor of the child in conflict with the law (*Sec. 3, RA 9344*)

**MINIMUM AGE OF CRIMINAL RESPONSIBILITY
AND TREATMENT OF CHILD BELOW AGE OF
RESPONSIBILITY**

AGE BRACKET	CRIMINAL LIABILITY	TREATMENT
15 years old or below.	Exempt.	The child shall be subjected to an intervention program.
Above 15 but below 18, who acted <i>without</i> discernment.	Exempt.	The child shall be subjected to an intervention program.
Above 15 but below 18, who acted <i>with</i> discernment.	Not exempt.	Such child shall be subjected to the appropriate proceedings in accordance with RA 9344.

NOTE: The exemption from criminal liability in the cases specified above does not include exemption from civil liability, which shall be enforced in accordance with existing laws.

Neglected child

A child who is above twelve (12) years of age up to fifteen (15) years of age and who commits parricide, murder, infanticide, kidnapping and serious illegal detention where the victim is killed or raped, robbery, with homicide or rape, destructive arson, rape, or carjacking where the driver or occupant is killed or raped or offenses under Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002) punishable by more than twelve (12) years of imprisonment, shall be deemed a neglected child under Presidential Decree No. 603, as amended, and shall be

mandatorily placed in a special facility within the youth care faculty or 'Bahay Pag-asa' called the Intensive Juvenile Intervention and Support Center (IJISC) (*Sec. 20-A, RA 10630*).

A child who is above twelve (12) years of age up to fifteen (15) years of age and who commits an offense for the second time or oftener: *Provided*, That the child was previously subjected to a community-based intervention program, shall be deemed a neglected child under Presidential Decree No. 603, as amended, and shall undergo an intensive intervention program supervised by the local social welfare and development officer: *Provided, further*, that, if the best interest of the child requires that he/she be placed in a youth care facility or 'Bahay Pag-asa', the child's parents or guardians shall execute a written authorization for the voluntary commitment of the child: *Provided, finally*, that if the child has no parents or guardians or if they refuse or fail to execute the written authorization for voluntary commitment, the proper petition for involuntary commitment shall be immediately filed by the DSWD or the LSWDO pursuant to Presidential Decree No. 603, as amended (*Sec. 20-B, RA 10630*).

**EXPLOITATION OF CHILDREN FOR
COMMISSION OF CRIMES**

Any person who, in the commission of a crime, makes use, takes advantage of, or profits from the use of children, including any person who abuses his/her authority over the child or who, with abuse of confidence, takes advantage of the vulnerabilities of the child and shall induce, threaten or instigate the commission of the crime, shall be imposed the penalty prescribed by law for the crime committed in its maximum period (*Sec. 20-C, RA 10630*).

JOINT PARENTAL RESPONSIBILITY

The court may require the parents of a child in conflict with the law to undergo counseling or any other intervention that, in the opinion of the court, would advance the welfare and best interest of the child based on the recommendation of the multi-disciplinary team of the IJISC, the LSWDO or the DSWD. A court exercising jurisdiction over a child in conflict with the law may require the attendance of one or both parents of the child at the place where the proceedings are to be conducted (*Sec. 20-D, RA 10630*).

NOTE: "Parents" shall mean any of the following:



- a. Biological parents of the child; or
- b. Adoptive parents of the child; or
- c. Individuals who have custody of the child
(*Sec. 20-D, RA 10630*).

The parents shall be liable for damages unless they prove, to the satisfaction of the court, that they were exercising reasonable supervision over the child at the time the child committed the offense and exerted reasonable effort and utmost diligence to prevent or discourage the child from committing another offense (*Sec. 20-D, RA 10630*).

Diversion Program

“Diversion Program” refers to the program that the child in conflict with the law is required to undergo after he/she is found responsible for an offense without resorting to formal court proceedings (*Sec. 4(j), RA 9344*). It is subject to the following conditions:

1. Where the impossible penalty for the crime committed is not more than six (6) years of imprisonment, the law enforcement officer or Punong Barangay with the assistance of the local social welfare and development officer or other members of the LCPC shall conduct mediation, family conferencing and conciliation;
2. In victimless crimes where the impossible penalty is not more than six (6) years of imprisonment, the local social welfare and development officer shall meet with the child and his/her parents or guardians for the development of the appropriate diversion and rehabilitation program; and
3. Where the impossible penalty for the crime committed exceeds six (6) years of imprisonment, diversion measures may be resorted to only by the court.

Intervention

“Intervention” refers to a series of activities which are designed to address issues that caused the child to commit an offense. It may take the form of an individualized treatment program which may include counseling, skills training, education, and other activities that will enhance his/ her psychological, emotional and psycho-social well-being. (*Sec. 4(l), RA 9344*).

NOTE: An intervention program covering at least a 3-year period shall be instituted in LGUs from the barangay to the provincial level.

**AUTOMATIC SUSPENSION OF SENTENCE
(BAR 2013)**

Once the child who is under 18 years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application: *Provided, however*, that suspension of sentence shall still be applied even if the juvenile is already eighteen years (18) of age or more at the time of the pronouncement of his/her guilt (*Sec. 38, RA 9344*).

Application of Suspension of Sentence

The benefits of the suspended sentence shall not apply to a child in conflict with the law who has once enjoyed suspension of sentence, but shall nonetheless apply to one who is convicted of an offense punishable by reclusion perpetua or life imprisonment pursuant to the provisions of Rep. Act No. 9346 prohibiting the imposition of the death penalty and in lieu thereof, reclusion perpetua, and after application of the privileged mitigating circumstance of minority (*A.M. No. 02-1-18-SC, November 24, 2009*).

NOTE: If the child in conflict with the law reaches eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with the provisions of RA 9344, or to extend the suspended sentence for a maximum period of up to the time the child reaches twenty-one (21) years of age, or to order service of sentence (*A.M. No. 02-1-18-SC, November 24, 2009*).

No suspension of sentence when the accused was a minor during the commission of the crime and is already beyond the age of 21 years old at the time of pronouncement of his guilt.

While Sec. 38 of RA No. 9344 provides that suspension of sentence can still be applied even if the child in conflict with the law is already eighteen (18) years of age or more at the time of the pronouncement of his/her guilt, Section 40 of the same law limits the said suspension of sentence until the child reaches the maximum age of 21. Hence, the accused, who is now beyond the age of twenty-one (21) years can no longer avail of the provisions of Sections 38 and 40 of RA 9344 as to his suspension of sentence, because such is

already moot and academic. Nevertheless, the accused may be made to serve his sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities that may be established, maintained, supervised and controlled by the BUCOR, in coordination with the DSWD as provided by Sec. 51 (*People v. Mantalaba*, G.R. No. 186227, July 20, 2011 reiterating *People v. Sarcia*).

RIGHTS OF CHILDREN IN CONFLICT WITH THE LAW

Every child in conflict with the law shall have the following rights, including but not limited to:

- a. the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment;
- b. the right not to be imposed a sentence of capital punishment or life imprisonment, without the possibility of release;
- c. the right not to be deprived, unlawfully or arbitrarily, of his/her liberty; detention or imprisonment being a disposition of last resort, and which shall be for the shortest appropriate period of time;
- d. the right to be treated with humanity and respect, for the inherent dignity of the person, and in a manner which takes into account the needs of a person of his/her age. In particular, a child deprived of liberty shall be separated from adult offenders at all times. No child shall be detained together with adult offenders. He/She shall be conveyed separately to or from court. He/She shall await hearing of his/her own case in a separate holding area. A child in conflict with the law shall have the right to maintain contact with his/her family through correspondence and visits, save in exceptional circumstances;
- e. the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his/her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on such action;
- f. the right to bail and recognizance, in appropriate cases;
- g. the right to testify as a witness in his/her own behalf under the rule on examination of a child witness;
- h. the right to have his/her privacy respected fully at all stages of the proceedings;
- i. the right to diversion if he/she is qualified and voluntarily avails of the same;
- j. the right to be imposed a judgment in proportion to the gravity of the offense where his/her best interest, the rights of the victim and the needs of society are all taken into consideration by the court, under the principle of restorative justice;
- k. the right to have restrictions on his/her personal liberty limited to the minimum, and where discretion is given by law to the judge to determine whether to impose fine or imprisonment, the imposition of fine being preferred as the more appropriate penalty;
- l. in general, the right to automatic suspension of sentence;
- m. the right to probation as an alternative to imprisonment, if qualified under the Probation Law;
- n. the right to be free from liability for perjury, concealment or misrepresentation; and
- o. other rights as provided for under existing laws, rules and regulations (*Sec. 5, RA 9344*).

DETERMINATION OF AGE

NOTE: The child in conflict with the law shall enjoy the presumption of minority.

How age is determined

1. Birth certificate;
2. Baptismal certificate; and
3. Any other pertinent documents.

NOTE: In the absence of these documents, age may be based on information from the child himself/herself, testimonies of other persons, the physical appearance of the child and other relevant evidence. In case of doubt as to the age of the child, it shall be resolved in his/her favor.

EXEMPTION FROM CRIMINAL LIABILITY: STATUS OFFENSES AND OFFENSES NOT APPLICABLE TO CHILDREN

Exempting provisions under this act

1. *Status offenses*– Any conduct not considered an offense or not penalized if committed by an adult shall not be considered an offense and shall not be punished if committed by a child (*Sec. 57, RA 9344*)

Example: Curfews for minors



2. *Offenses not applicable to children*—Persons below eighteen (18) years of age shall be exempt from prosecution for the crime of:
 - a. *Vagrancy and prostitution* under Sec. 202 of RPC

NOTE: Under RA 10158, Vagrancy has been decriminalized but prostitution is still a crime. It was excluded from decriminalization under RA 10158.

- b. *Sniffing of rugby* under Presidential Decree No. 1619
 - c. *Mendicancy (PD 1536) (Sec. 58, RA 9344)*
3. *Exemption from the application of death penalty (Sec. 59, RA 9344)*

NOTE: RA 9346 prohibits the imposition of the death penalty in the Philippines.

PUNISHABLE ACTS

The following and any other similar acts shall be considered prejudicial and detrimental to the psychological, emotional, social, spiritual, moral and physical health and well-being of the child in conflict with the law and therefore, prohibited:

1. Employment of threats of whatever kind and nature;
2. Employment of abusive, coercive and punitive measures such as cursing, beating, stripping, and solitary confinement;
3. Employment of degrading, inhuman and cruel forms of punishment such as shaving the heads, pouring irritating, corrosive or harmful substances over the body of the child in conflict with the law, or forcing him/her to walk around the community wearing signs which embarrass, humiliate, and degrade his/her personality and dignity; and
4. Compelling the child to perform involuntary servitude in any and all forms under any and all instances (*Sec. 61, RA 9344*).

Prohibited acts of competent authorities under RA 9344

In the conduct of the proceedings beginning from the initial contact with the child, the competent authorities must:

1. Refrain from branding or labeling children as young criminals, juvenile delinquents, prostitutes or attaching to them in any manner any other derogatory names; and

2. Make no discriminatory remarks particularly with respect to the child's class or ethnic origin (*Sec. 60, RA 9344*).
- 3.

OBSTRUCTION OF JUSTICE PD 1829

Purpose

The purpose of the law is to discourage public indifference or apathy towards the apprehension and prosecution of criminal offenders. It is necessary to penalize acts which obstructs or frustrates or tend to obstruct or frustrate the successful apprehension and prosecution of criminal offenders.

PUNISHABLE ACTS

Any person, who knowingly or willfully obstructs, impedes, frustrates or delays the apprehension of suspects and the investigation and prosecution of criminal cases by committing any of the following acts:

1. Preventing witnesses from testifying in any criminal proceeding or from reporting the commission of any offense or the identity of any offender/s by means of bribery, misrepresentation, deceit, intimidation, force or threats;
2. Altering, destroying, suppressing or concealing any paper, record, document, or object, with intent to impair its veracity, authenticity, legibility, availability, or admissibility as evidence in any investigation of or official proceedings in, criminal cases, or to be used in the investigation of, or official proceedings in, criminal cases; **(BAR 2005)**
3. Harboring or concealing, or facilitating the escape of, any person he knows, or has reasonable ground to believe or suspect, has committed any offense under existing penal laws in order to prevent his arrest, prosecution and conviction;
4. Publicly using a fictitious name for the purpose of concealing a crime, evading prosecution or the execution of a judgment, or concealing his true name and other personal circumstances for the same purpose or purposes;
5. Delaying the prosecution of criminal cases by obstructing the service of process or court orders or disturbing proceedings in the

fiscal's offices, in Tanodbayan, or in the courts;

6. Making, presenting or using any record, document, paper or object with knowledge of its falsity and with intent to affect the course or outcome of the investigation of, or official proceedings in, criminal cases;
7. Soliciting, accepting, or agreeing to accept any benefit in consideration of abstaining from, discounting, or impeding the prosecution of a criminal offender;
8. Threatening directly or indirectly another with the infliction of any wrong upon his person, honor or property or that of any immediate member or members of his family in order to prevent such person from appearing in the investigation of, or official proceedings in, criminal cases, or imposing a condition, whether lawful or unlawful, in order to prevent a person from appearing in the investigation of or in official proceedings in, criminal cases; and
9. Giving of false or fabricated information to mislead or prevent the law enforcement agencies from apprehending the offender or from protecting the life or property of the victim; or fabricating information from the data gathered in confidence by investigating authorities for purposes of background information and not for publication and publishing or disseminating the same to mislead the investigator or the court (*Sec. 1, PD 1829*).

NOTE: If any of the acts mentioned herein is penalized by any other law with a higher penalty, the higher penalty shall be imposed. If any of the foregoing acts are committed by a public official or employee, he shall, in addition to the penalties provided there under, suffer perpetual disqualification from holding public office (*Sec. 2, PD 1829*).

Q: Senator Juan Ponce Enrile was charged for rebellion. Subsequently, he was charged under PD 1829, for allegedly accommodating Col. Gregorio Honasan by giving him food and comfort in 1989. The complaint states that "knowing that Col. Honasan is a fugitive from justice, Sen. Enrile did not do anything to have Honasan arrested and apprehended." While the complaint was filed, a charge of rebellion against Sen. Enrile was already instituted. Is Sen. Juan Ponce Enrile liable under PD 1829?

A: NO. Sen. Enrile could not be separately charged under PD 1829, as this is absorbed in the charge of

rebellion already filed against Sen. Enrile (*Enrile v. Hon. Admin., G.R. No. 93335, September 13, 1990*).

PROBATION LAW
PD 968, AS AMENDED

DEFINITION OF TERMS**Probation**

It is a disposition under which a defendant, after conviction and sentence, is released subject to conditions imposed by the court and to the supervision of a probation officer (*Sec. 3(a), PD 968*).

NOTE: Probation only affects the criminal aspect of the case and has no bearing on his civil liability

Probation Officer

One who investigates for the court a referral for probation or supervises a probationer or both (*Sec. 3(c), PD 968*).

PURPOSES

1. Promote the correction and rehabilitation of an offender by providing him with individualized treatment;
2. Provide an opportunity for the reformation of a penitent offender which might be less probable if he were to serve a prison sentence; and
3. Prevent the commission of offenses (*Sec. 2, PD 968*).

**GRANT OF PROBATION,
MANNER AND CONDITIONS**

Probation is a mere privilege and its grant rest solely upon the discretion of the court. It is exercised primarily for the benefit of the organized society and only incidentally for the benefit of the accused. The grant of probation is not automatic or ministerial (*Bernardo v. Balagot, G.R. No. 86561, November 10, 1992*).

Probationable Penalty

The trial court may, after it shall have convicted and sentenced a defendant for a probationable penalty and upon application by said defendant within the period for perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and



upon such terms and conditions as it may deem best. No application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment of conviction(*Sec. 4, PD 968 as amended by RA 10707*).

Non-probationable Penalty

When a judgment of conviction imposing a non-probationable penalty is appealed or reviewed, and such judgment is modified through the imposition of a probationable penalty, the defendant shall be allowed to apply for probation based on the modified decision before such decision becomes final. The application for probation based on the modified decision shall be filed in the trial court where the judgment of conviction imposing a non-probationable penalty was rendered, or in the trial court where such case has since been re-raffled.

NOTE: The accused shall lose the benefit of probation should he seek a review of the modified decision which already imposes a probationable penalty(*Sec. 4, PD 968 as amended by RA 10707*).

Several Defendants

In a case involving several defendants where some have taken further appeal, the other defendants may apply for probation by submitting a written application and attaching thereto a certified true copy of the judgment of conviction(*Sec. 4, PD 968 as amended by RA 10707*).

Effect of filing for application for probation

A judgment of conviction becomes final when the accused files a petition for probation. However, the judgment is not executory until the petition for probation is resolved. The filing of the petition for probation is a waiver by the accused of his right to appeal the judgment of conviction.

NOTE: An order placing defendant on probation is not a sentence but a suspension of the imposition of sentence. It is not a final judgment but an "interlocutory judgment" in the nature of a conditional order placing the convicted defendant under the supervision of the court for his reformation, to be followed by a final judgment of discharge, if the conditions of the probation are complied with, or by a final judgment if the conditions are violated(*Bala v. Hon. Martinez, G.R. No. L-67301, January 29, 1990*)

Availing the benefits of Probation Law if the sentence imposed is a mere fine

Probation may be granted whether the sentence imposes a term of imprisonment or a fine only(*Sec. 4, PD 968 as amended by RA 10707*).

Effect on accessory penalties once probation is granted

Accessory penalties are deemed suspended.

CONDITIONS OF PROBATION

1. Present himself to the probation officer designated to undertake his supervision at such place as may be specified in the order within seventy-two hours from receipt of said order;
2. Report to the probation officer at least once a month at such time and place as specified by said officer;
3. The court may also require the probationer to:
 - a. Cooperate with a program of supervision;
 - b. Meet his family responsibilities;
 - c. Devote himself to a specific employment and not to change said employment without the prior written approval of the probation officer;
 - d. Undergo medical, psychological or psychiatric examination and treatment and enter and remain in specified institution, when required for that purpose;
 - e. Pursue a prescribed secular study or vocational training;
 - f. Attend or reside in a facility established for instruction, recreation or residence of persons on probation;
 - g. Refrain from visiting houses of ill- repute;
 - h. Abstain from drinking intoxicated beverages to excess;
 - i. Permit the probation officer or an authorized social worker to visit his home and place of work;
 - j. Reside at premises approved by it and not to change his residence without its prior written approval; or
 - k. Satisfy any other condition related to the rehabilitation of the defendant and not unduly restrictive of his liberty or incompatible with his freedom of conscience(*Sec. 10, PD 968*).

CRITERIA OF PLACING AN OFFENDER ON PROBATION

Criteria on determining whether an offender may be placed on probation

In determining whether an offender may be placed on probation, the court shall consider all information relative to the character, antecedents, environment, mental and physical condition of the offender, and available institutional and community resources.

When probation shall be denied

Probation shall be denied if the court finds that:

- a. The offender is in need of correctional treatment that can be provided most effectively by his commitment to an institution;
- b. There is an undue risk that during the period of probation the offender will commit another crime; or
- c. Probation will depreciate the seriousness of the offense committed (Sec. 8, PD 968).

Remedy if the application for probation is denied

An order granting or denying probation shall not be appealable (Sec. 4, PD 968 as amended by RA 10707). Hence, if granted, the remedy is a Motion for Reconsideration and if denied, a petition for certiorari.

DISQUALIFIED OFFENDERS

Disqualification to avail the benefits of the probation law (BAR 2004)

1. Sentenced to serve a maximum term of imprisonment of more than six (6) years; (BAR 1990, 1995, 2002)
2. Convicted of any crime against national security;
3. Who have previously been convicted by final judgment of an offense punishable by imprisonment of more than six (6) months and one (1) day and/or a fine of more than one thousand pesos (P1,000.00);
4. Who have been once on probation under the provision of this Decree;
5. Who are already serving sentence at the time the substantive provisions of this Decree became applicable pursuant to Section 33 hereof;

6. If he perfected an appeal from the judgment of conviction (Sec. 4, PD 968 as amended by RA 10707);
7. If he is convicted of violation of Election offenses (Sec. 264, BP 881); or
8. Any person convicted for drug trafficking or pushing under RA 9165 regardless of the penalty imposed (Sec. 24, RA 9165).

NOTE: In multiple prison terms, those imposed against the accused found guilty of several offenses

should not be added up, and their sum total should not be determinative of his disqualification from probation since the law uses the word "maximum" not "total" term of imprisonment (*Francisco v. CA, et. al, G.R. No. 108747, April 6, 1995*).

Q: Arnel Colinares was found guilty of frustrated homicide by the RTC. On appeal, the CA affirmed his conviction. On petition for review, SC ruled that he was only guilty of attempted homicide, which penalty is "probationable". Is Colinares now entitled to apply for probation upon remand of the case to the lower court, even after he has perfected his appeal to a previous conviction (frustrated homicide) which was not "probationable"?

A: YES. What is clear is that, had the RTC done what was right and imposed on Arnel the correct penalty of two years and four months maximum, he would have had the right to apply for probation. Arnel did not appeal from a judgment that would have allowed him to apply for probation. He did not have a choice between appeal and probation. While it is true that probation is a mere privilege, the point is not that Arnel has the right to such privilege; he certainly does not have. What he has is the right to apply for that privilege. If the Court allows him to apply for probation because of the lowered penalty, it is still up to the trial judge to decide whether or not to grant him the privilege of probation, taking into account the full circumstances of his case (*Colinares v. People, G.R. No. 182748, December 13, 2011*).

PERIOD OF PROBATION

Period of probation

1. The period of probation of a defendant sentenced to a term of imprisonment of not more than one year shall not exceed two



years, and in all other cases, said period shall not exceed six years.

2. When the sentence imposes a fine only and the offender is made to serve subsidiary imprisonment in case of insolvency, the period of probation shall not be less than nor be more than twice the total number of days of subsidiary imprisonment. **(BAR 2005)**

ARREST OF PROBATIONER

Court may issue a warrant of arrest against a probationer

The court may issue the warrant for violations of any condition of the probation.

Effect after the arrest of the probationer

He shall be immediately brought before the court for hearing, which may be informal and summary, of the violation charged. If the violation is established, the court may revoke or continue his probation and modify the conditions thereof. If revoked, the court shall order the probationer to serve the sentence originally imposed. The order revoking the grant of probation or modifying the terms and conditions thereof shall not be appealable.

NOTE: The defendant may be admitted to bail pending the hearing and in such case, the provisions regarding release on bail of persons charged with a crime shall be applicable (Sec. 15, PD 968).

Sanctions imposed if the probationer commits any serious violation of the conditions of probation

1. The court may issue a warrant for the arrest of a probationer.
2. If violation is established, the court may:
 - a. Revoke his probation; **OR**
 - b. Continue his probation and modify the conditions thereof.

NOTE: This order is not appealable.

3. If probation is revoked, the probationer shall serve the sentence originally imposed.

TERMINATION OF PROBATION; EXCEPTION

Termination of probation (BAR 2005)

The court may order the final discharge of the probationer upon finding that he has fulfilled the terms and conditions of probation.

Effects of termination of probation

1. Case is deemed terminated.
2. Restoration of all civil rights lost or suspended.
3. Totally extinguish his criminal liability as to the offense for which probation was granted (Sec. 16, PD 968 as amended by RA 10707)

NOTE: The mere expiration of the period for probation does not, *ipso facto*, terminate the probation. Probation is not co-terminus with its period, there must be an order from the Court of final discharge, terminating the probation. If the accused violates the condition of the probation before the issuance of said order, the probation may be revoked by the Court (*Bala v. Martinez*, G.R. No. L-67301, January 29, 1990).

Pardon vis-à-vis Probation

Pardon	Probation
Includes any crime and is exercised individually by the President.	Exercised individually by the trial court.
Merely looks forward and relieves the offender from the consequences of an offense of which he has been convicted; it does not work for the restoration of the rights to hold public office, or the right of suffrage, unless such rights are expressly restored by means of pardon.	It promotes the correction and rehabilitation of an offender by providing him with individualized treatment; provides an opportunity for the reformation of a penitent offender which might be less probable if he were to serve a prison sentence; and prevent the commission of offenses.
Exercised when the person is already convicted.	Must be exercised within the period for perfecting an appeal.
Being a private act by the president, it must be pleaded and proved by the person pardoned.	Being a grant by the trial court; it follows that the trial court also has the power to order its revocation in a proper case and

	under proper circumstances.
Does not alter the fact that the accused is a recidivist as it produces only the extinction of the personal effects of the penalty.	Does not alter the fact that the accused is a recidivist as it provides only for an opportunity of reformation to the penitent offender.
Does not extinguish the civil liability of the offender.	Does not extinguish the civil liability of the offender.

TRUST RECEIPTS LAW PD 115

Trust Receipt (TR) transaction

It is any transaction between the entruster and trustee:

1. Whereby the *entruster* who owns or holds title or security interests over certain specified goods, documents or instrument (GDI), *releases* the same to the possession of trustee upon the latter's execution and delivery of a TR.
2. In the TR, the *trustee* binds himself to *hold* the GDI in trust for the entruster and, in case of default,
 - a. to sell or otherwise dispose such GDI with the obligation to turn over to the entruster the proceeds to the extent of the amount owing to it or
 - b. to turn over the GDI itself if not sold or otherwise disposed of in accordance with the terms and conditions specified in the TR.

A TR is a commercial document whereby the bank releases the goods in the possession of the trustee but retains ownership thereof while the trustee shall sell the goods and apply the proceeds for the full payment of his liability with the bank. It is a security arrangement to which a bank acquires ownership of the imported personal property (*Garcia vs. Court of Appeals, G.R. No. 119845, July 5, 1996*).

It is a document which expresses a security transaction where the lender, having no prior title to the goods on which the lien is to be constituted, and not having possession over the same since possession thereof remains in the borrower, lends him money to the borrower on security of the

goods which borrower is privileged to sell, clear of the lien, and with an agreement to pay all or part of the sale proceeds to the lender (*Metropolitan Bank vs. Go, G.R. No. 155647, November 23, 2007*).

Q: What is the liability of trustee for loss?

A: The risk of loss shall be borne by the trustee. Loss of goods, documents or instruments which are the subject of a trust receipt, pending their disposition, irrespective of whether or not it was due to the fault or negligence of the trustee, shall not extinguish his obligation to the entruster for the value thereof (Sec. 10, PD 115).

ELEMENTS OF *ESTAFA* IN TRUST RECEIPT

In order that the trustee may be validly prosecuted for *estafa* under Art. 315, paragraph 1(b) of the RPC, in relation with Sec. 13 of PD 115, the following elements must be established (**R-MAD**):

1. The trustee **Received** the subject goods in trust or under the obligation to sell the same and to remit the proceeds thereof to the entruster, or to return the goods if not sold;
2. The trustee **Misappropriated** or converted the goods and/or the proceeds of the sale;
3. The trustee performed such acts with **Abuse of confidence** to the damage and prejudice of the entruster; and
4. A **Demand** was made on the trustee by the entruster for the remittance of the proceeds or the return of the unsold goods (*Land Bank of the Philippines vs. Perez, GR No. 166884, June 13, 2012*).

NOTE: If proof as regards the delivery of GDI to the accused (trustee) is insufficient, *estafa* cannot lie (*Ramos v. CA, G.R. No. L-39922-25, August 21, 1987*).

Compliance with the obligation under the Trust Receipt agreement vis-a-vis criminal liability

1. If compliance occurred *before the criminal charge* - there is no criminal liability.
2. If compliance occurred *after the charge even before conviction*- the criminal action will *not* be extinguished.

P.D. 115 does not violate the prohibition in the Constitution against imprisonment for non-payment of a debt



What is being punished is the dishonesty and abuse of confidence in the handling of money or goods to the prejudice of another regardless of whether the latter is the owner or not. It does not seek to enforce payment of the loan. Thus, there can be no violation of a right against imprisonment for non-payment of a debt (*People vs. Hon. Nitafan*, G.R. No. 81559, April 6, 1992).

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Q: Is lack of intent to defraud a bar to the prosecution of these acts or omissions? (2006 Bar)

A: NO. The mere failure to account or return gives rise to the crime which is *malum prohibitum*. There is no requirement to prove intent to defraud (*Ching vs. Secretary of Justice*, G.R. No. 164317, February 6, 2006).

Penal sanction is not available if the goods are not intended for sale or resale

To be a TR transaction, the goods must be intended for sale or resale. The Supreme Court, in one case, held that the trial court erred in ruling that the agreement in the case was a TR transaction because the goods involved were intended to be used in the fabrication of steel communication towers.

The Court further ruled that, "the true nature of a trust receipt transaction can be found in the 'whereas' clause of PD 115 which states that a trust receipt is to be utilized 'as a convenient business device to assist importers and merchants solve their financing problems.' Obviously, the State, in enacting the law, sought to find a way to assist importers and merchants in their financing in order to encourage commerce in the Philippines."

The principle is of course not limited in its application to financing importations, since the principle is equally applicable to domestic transactions. Regardless of whether the transaction is foreign or domestic, it is important to note that the transactions discussed in relation to trust receipts mainly involved sales (*Ng v. People*, G.R. No. 173905, April 23, 2010).

In another case it was held that when both parties enter into an agreement knowing that the return of the goods subject of the trust receipt is not possible even without any fault on the part of the entrustee, it is not a trust receipt transaction penalized under Section 13 of P.D. 115; the only obligation actually agreed upon by the parties would be the return of the proceeds of the sale

transaction. The transaction becomes a mere loan, where the borrower is obligated to pay the bank the amount spent for the purchase of the goods (*LBP v. Perez*, G.R. No. 166884, June 13, 2012)

PENAL SANCTION WHEN THE OFFENDER IS A CORPORATION

Though the entrustee is a corporation, nevertheless, the law specifically makes the officers, employees or other officers or persons responsible for the offense, without prejudice to the civil liabilities of such corporation and/or board of directors, officers, or other officials or employees responsible for the offense.

If the crime is committed by a corporation or other juridical entity, the directors, officers, employees or other officers thereof responsible for the offense shall be charged and penalized for the crime, precisely because of the nature of the crime and the penalty therefor. A corporation cannot be arrested and imprisoned; hence, cannot be penalized for a crime punishable by imprisonment (*Ching v. Secretary of Justice*, *supra*).

Rationale behind the accountability of the officers of the corporation

The rationale is that such officers or employees are vested with the authority and responsibility to devise means necessary to ensure compliance with the law and, if they fail to do so, are held criminally accountable; thus, they have a responsible share in the violations of the law.

NOTE: An officer of a corporation who signed a TR cannot hide behind the cloak of the separate corporate personality of the corporation, where "he is the actual, present and efficient actor." Corporate officers or employees, through whose act, default or omission the corporation commits a crime, are individually guilty of the crime. The principle applies whether or not the crime requires the consciousness of wrongdoing (*Ching v. Secretary of Justice*, G. R. No. 164317, February 6, 2006)

CYBERCRIME PREVENTION ACT RA 10175

DEFINITION OF TERMS

Access refers to the instruction, communication with, storing data in, retrieving data from, or otherwise making use of any resources of a

computer system or communication network(*Sec. 3(a), RA 10175*)

Alteration refers to the modification or change, in form or substance, of an existing computer data or program(*Sec. 3(b), RA 10175*)

Communication refers to the transmission of information through ICT media, including voice, video and other forms of data(*Sec. 3(c), RA 10175*)

Computer refers to an electronic, magnetic, optical, electrochemical, or other data processing or communications device, or grouping of such devices, capable of performing logical, arithmetic, routing, or storage functions and which includes any storage facility or equipment or communications facility or equipment directly related to or operating in conjunction with such device. It covers any type of computer device including devices with data processing capabilities like mobile phones, smart phones, computer networks and other devices connected to the internet(*Sec. 3(d), RA 10175*)

Computer data refers to any representation of facts, information, or concepts in a form suitable for processing in a computer system including a program suitable to cause a computer system to perform a function and includes electronic documents and/or electronic data messages whether stored in local computer systems or online(*Sec. 3(e), RA 10175*)

Computer program refers to a set of instructions executed by the computer to achieve intended results(*Sec. 3(f), RA 10175*)

Computer system refers to any device or group of interconnected or related devices, one or more of which, pursuant to a program, performs automated processing of data. It covers any type of device with data processing capabilities including, but not limited to, computers and mobile phones. The device consisting of hardware and software may include input, output and storage components which may stand alone or be connected in a network or other similar devices. It also includes computer data storage devices or media(*Sec. 3(g), RA 10175*)

Cyber refers to a computer or a computer network, the electronic medium in which online communication takes place(*Sec. 3(i), RA 10175*)

Critical infrastructure refers to the computer systems, and/or networks, whether physical or virtual, and/or the computer programs, computer

data and/or traffic data so vital to this country that the incapacity or destruction of or interference with such system and assets would have a debilitating impact on security, national or economic security, national public health and safety, or any combination of those matters(*Sec. 3(j), RA 10175*)

Cybersecurity refers to the collection of tools, policies, risk management approaches, actions, training, best practices, assurance and technologies that can be used to protect the cyber environment and organization and user's assets(*Sec. 3(k), RA 10175*)

Database refers to a representation of information, knowledge, facts, concepts, or instructions which are being prepared, processed or stored or have been prepared, processed or stored in a formalized manner and which are intended for use in a computer system(*Sec. 3(l), RA 10175*)

Interception refers to listening to, recording, monitoring or surveillance of the content of communications, including procuring of the content of data, either directly, through access and use of a computer system or indirectly, through the use of electronic eavesdropping or tapping devices, at the same time that the communication is occurring(*Sec. 3(m), RA 10175*)

Service provider refers to:

1. Any public or private entity that provides to users of its service the ability to communicate by means of a computer system; and
2. Any other entity that processes or stores computer data on behalf of such communication service or users of such service(*Sec. 3(n), RA 10175*)

Subscriber's information refers to any information contained in the form of computer data or any other form that is held by a service provider, relating to subscribers of its services other than traffic or content data and by which identity can be established:

1. The type of communication service used, the technical provisions taken thereto and the period of service;
2. The subscriber's identity, postal or geographic address, telephone and other access numbers, any assigned network address, billing and payment information, available on the basis of the service agreement or arrangement; and

3. Any other available information on the site of the installation of communication equipment, available on the basis of the service agreement or arrangement (Sec. 3(o), RA 10175)

Traffic data or non-content data refers to any computer data other than the content of the communication including, but not limited to, the communication's origin, destination, route, time, date, size, duration, or type of underlying service (Sec. 3(p), RA 10175)

PUNISHABLE ACTS

CYBERCRIME OFFENSES (Sec. 5, RA 10175)

I. Offenses against the confidentiality, integrity and availability of computer data and systems:

1. **Illegal access** - The access to the whole or any part of a computer system without right
2. **Illegal Interception** - The interception made by technical means without right of any non-public transmission of computer data to, from, or within a computer system including electromagnetic emissions from a computer system carrying such computer data.
3. **Data Interference** — The intentional or reckless alteration, damaging, deletion or deterioration of computer data, electronic document, or electronic data message, without right, including the introduction or transmission of viruses.
4. **System Interference** — The intentional alteration or reckless hindering or interference with the functioning of a computer or computer network by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data or program, electronic document, or electronic data message, without right or authority, including the introduction or transmission of viruses.
5. **Misuse of Devices:**
 - i. The use, production, sale, procurement, importation, distribution, or otherwise making available, without right of a device,
 - a. including a computer program, designed or adapted primarily for the purpose of committing any of the offenses under this Act;
 - b. or a computer password, access code, or similar data by which the whole or any part of a computer system is capable of being accessed with intent

that it be used for the purpose of committing any of the offenses under this Act.

- ii. The possession of an item referred to in the preceding paragraph with intent to use said devices for the purpose of committing any of the offenses under this section 4 of RA 10175.
6. **Cyber-squatting** - The acquisition of a domain name over the internet in bad faith to profit, mislead, destroy reputation, and deprive others from registering the same, if such a domain name is:
 - i. similar, identical, or confusingly similar to an existing trademark registered with the appropriate government agency at the time of the domain name registration,
 - ii. identical or in any way similar with the name of a person other than the registrant, in case of a personal name; and
 - iii. acquired without right or with intellectual property interests in it.

II. Computer-Related Offenses

1. **Computer-related Forgery**
 - i. The input, alteration, or deletion of any computer data without right resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible
 - ii. The act of knowingly using computer data which is the product of computer-related forgery as defined herein, for the purpose of perpetuating a fraudulent or dishonest design
2. **Computer-related Fraud** — The unauthorized input, alteration, or deletion of computer data or program or interference in the functioning of a computer system, causing damage thereby with fraudulent intent: *Provided*, that if no damage has yet been caused, the penalty imposable shall be one (1) degree lower
3. **Computer-related Identity Theft** - The intentional acquisition, use, misuse, transfer, possession, alteration or deletion of identifying information belonging to another, whether natural or juridical, without right: *Provided*, that if no damage has yet been caused, the penalty imposable shall be one (1) degree lower.

III. Content-Related Offenses

1. **Cybersex** — The willful engagement, maintenance, control, or operation, directly or indirectly, of any lascivious exhibition of sexual organs or sexual activity, with the aid of a computer system, for favor or consideration.
2. **Child Pornography** — The unlawful or prohibited acts defined and punishable by Republic Act No. 9775 or the Anti-Child Pornography Act of 2009, committed through a computer system: *Provided*, That the penalty to be imposed shall be (1) one degree higher than that provided for in Republic Act No. 9775.

NOTE: Child pornography committed online as to which, charging the offender under both Section 4(c)(2) of RA 10175 and RA 9775 or the Anti-Child Pornography Act of 2009 is VOID and UNCONSTITUTIONAL (*Disini v. Secretary of Justice, GR No. 203335, February 18, 2014*).

3. **Unsolicited Commercial Communications** — The transmission of commercial electronic communication with the use of computer system which seek to advertise, sell, or offer for sale products and services are prohibited unless:
 - i. There is prior affirmative consent from the recipient; or
 - ii. The primary intent of the communication is for service and/or administrative announcements from the sender to its existing users, subscribers or customers; or
 - iii. The following conditions are present:
 - a. The commercial electronic communication contains a simple, valid, and reliable way for the recipient to reject receipt of further commercial electronic messages (opt-out) from the same source;
 - b. The commercial electronic communication does not purposely disguise the source of the electronic message; and
 - c. The commercial electronic communication does not purposely include misleading information in any part of the message in order to induce the recipients to read the message.
4. **Libel** — The unlawful or prohibited acts of libel as defined in Article 355 of the Revised Penal Code, as amended, committed through a computer system or any other similar means which may be devised in the future (*Sec. 4, RA 10175*).

OTHER OFFENSES (Sec. 5, RA 10175)

1. **Aiding or Abetting in the Commission of Cybercrime** – Any person who willfully abets or aids in the commission of any of the offenses enumerated in this Act shall be held liable.
2. **Attempt in the Commission of Cybercrime** — Any person who willfully attempts to commit any of the offenses enumerated in this Act shall be held liable (*Sec. 5, RA 10175*).

NOTE: The Supreme Court declared that VOID for being UNCONSTITUTIONAL:

- a. Section 4(c)(3) of RA 10175 that penalizes posting of unsolicited commercial communications;
- b. Section 12 of RA 10175 that authorizes the collection or recording of traffic data in real-time;
- c. Section 19 of RA 10175 that authorizes the Department of Justice to restrict or block access to suspected Computer Data;
- d. Section 4(c)(4) with respect to persons who simply receive the post and react to it; and
- e. Section 5 of RA 10175 with respect to Sections 4(c)(2) on Child Pornography, 4(c)(3) on Unsolicited Commercial Communications, and 4(c)(4) on online Libel (*Disini v. Secretary of Justice, GR No. 203335, February 18, 2014*)

The terms “aiding or abetting” constitute broad sweep that generates chilling effect on those who express themselves through cyberspace posts, comments, and other messages. For example, when “Google procures, stores, and indexes child pornography and facilitates the completion of transactions involving the dissemination of child pornography,” does this make Google and its users aiders and abettors in the commission of child pornography crimes?

With respect to online libel, its vagueness raises apprehension on the part of internet users because of its obvious chilling effect on the freedom of expression, especially since the crime of aiding or abetting ensnares all the actors in the cyberspace front in a fuzzy way. What is more, as the petitioners point out, formal crimes such as libel are not punishable unless consummated.

CORPORATE LIABILITY

When any of the punishable acts herein defined are knowingly committed on behalf of or for the benefit of a juridical person, by a natural person acting either individually or as part of an organ of



the juridical person, who has a leading position within, based on:

- a. a power of representation of the juridical person provided the act committed falls within the scope of such authority;
- b. an authority to take decisions on behalf of the juridical person: *Provided*, That the act committed falls within the scope of such authority; or
- c. an authority to exercise control within the juridical person, the juridical person shall be held liable for a fine equivalent to at least double the fines imposable in Section 7 up to a maximum of Ten million pesos (PhP10,000,000.00).

If the commission of any of the punishable acts herein defined was made possible due to the lack of supervision or control by a natural person referred to and described in the preceding paragraph, for the benefit of that juridical person by a natural person acting under its authority, the juridical person shall be held liable for a fine equivalent to at least double the fines imposable in Section 7 up to a maximum of Five million pesos (PhP5,000,000.00).

The liability imposed on the juridical person shall be without prejudice to the criminal liability of the natural person who has committed the offense (*Sec. 9, RA 10175*).

SEARCH, SEIZURE AND EXAMINATION OF COMPUTER DATA

Where a search and seizure warrant is properly issued, the law enforcement authorities shall likewise have the following powers and duties.

Within the time period specified in the warrant, to conduct interception, as defined in this Act, and:

- a. To secure a computer system or a computer data storage medium;
- b. To make and retain a copy of those computer data secured;
- c. To maintain the integrity of the relevant stored computer data;
- d. To conduct forensic analysis or examination of the computer data storage medium; and
- e. To render inaccessible or remove those computer data in the accessed computer or computer and communications network.

The law enforcement authorities may order any person who has knowledge about the functioning of the computer system and the measures to protect and preserve the computer data therein to provide, as is reasonable, the necessary

information, to enable the undertaking of the search, seizure and examination.

Law enforcement authorities may request for an extension of time to complete the examination of the computer data storage medium and to make a return thereon but in no case for a period longer than thirty (30) days from date of approval by the court (*Sec. 15, RA 10175*).

Exclusionary Rule

Any evidence procured without a valid warrant or beyond the authority of the same shall be inadmissible for any proceeding before any court or tribunal (*Sec. 18, RA 10175*).

CYBERCRIME INVESTIGATION AND COORDINATING CENTER (CICC)

The CICC shall have the following powers and functions:

- a. To formulate a national cybersecurity plan and extend immediate assistance for the suppression of real-time commission of cybercrime offenses through a computer emergency response team (CERT);
- b. To coordinate the preparation of appropriate and effective measures to prevent and suppress cybercrime activities as provided for in this Act;
- c. To monitor cybercrime cases being bandied by participating law enforcement and prosecution agencies;
- d. To facilitate international cooperation on intelligence, investigations, training and capacity building related to cybercrime prevention, suppression and prosecution;
- e. To coordinate the support and participation of the business sector, local government units and nongovernment organizations in cybercrime prevention programs and other related projects;
- f. To recommend the enactment of appropriate laws, issuances, measures and policies;
- g. To call upon any government agency to render assistance in the accomplishment of the CICC's mandated tasks and functions; and
- h. To perform all other matters related to cybercrime prevention and suppression, including capacity building and such other functions and duties as may be necessary for the proper implementation of RA 10175 (*Sec. 26, RA 10175*).

Restricting or Blocking Access to Computer Data



When a computer data is prima facie found to be in violation of the provisions of this Act, the DOJ shall issue an order to restrict or block access to such computer data(*Sec. 19, RA 10175*)

Court having Jurisdiction over offenses in violation of this Act

The Regional Trial Court shall have jurisdiction over any violation of the provisions of this Act. including any violation committed by a Filipino national regardless of the place of commission.

Jurisdiction shall lie if any of the elements was committed within the Philippines or committed with the use of any computer system wholly or partly situated in the country, or when by such commission any damage is caused to a natural or juridical person who, at the time the offense was committed, was in the Philippines

There shall be designated special cybercrime courts manned by specially trained judges to handle cybercrime cases(*Sec. 21, RA 10175*)

HUMAN SECURITY ACT RA 9372

PUNISHABLE ACTS

Any act punishable under any of the following provisions of the:

RPC	SPECIAL PENAL LAWS
ii. Piracy in General and Mutiny in the High Seas or in the Philippine Waters	i. Anti-Hijacking Law
iii. Rebellion or Insurrection	ii. Anti-Piracy and Anti-Highway Robbery Law of 1974 (<i>PD 532</i>)
iv. <i>Coup d'etat</i> , including acts committed by private persons	iii. Decree Codifying the Laws on Illegal and Unlawful Possession, Manufacture, Dealing In, Acquisition or Disposition of Firearms, Ammunitions or Explosives
v. Murder	iv. The Law on Arson
vi. Kidnapping and Serious Illegal Detention	v. Toxic Substances and
vii. Crimes Involving Destruction;	

	Hazardous and Nuclear Waste Control Act of 1990 vi. Atomic Energy Regulatory and Liability Act of 1968
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The abovementioned act must:

1. Sow and create a condition of widespread and extraordinary fear and panic among the populace;
2. Coerce the government to give in to an unlawful demand (*Sec. 3, RA 9372*).

Absorption Principle in Terrorism

When a person has been prosecuted under a provision of this Act, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for any offense or felony which is necessarily included in the offense charged under this Act(*Sec. 49, RA 9372*).

PUNISHABLE ACTS

1. Terrorism (*Sec. 3, RA 9372*);
2. Conspiracy to commit terrorism(*Sec. 4, RA 9372*);
3. Accomplice (*Sec. 5, RA 9372*);
4. Accessory (*Sec. 6, RA 9372*);
5. Unauthorized or malicious interceptions and/or recording(*Sec. 16, RA 9372*);
6. Failure to deliver suspect to the proper judicial authority within three days(*Sec. 20, RA 9372*);
7. Violation of the rights of detainee by a police officer or his superior if the police officer is not identified(*Sec. 22, RA 9372*);
8. Threat, intimidation, coercion, or torture in the investigation and interrogation of a detained person(*Sec. 25, RA 9372*);
9. Unauthorized or malicious examination of a bank or a financial institution(*Sec. 36, RA 9372*);
10. Defiance by the bank office or employee of court authorization(*Sec. 37, RA 9372*);
11. False, untruthful statement or misrepresentation of material fact in joint affidavits(*Sec. 38, RA 9372*);
12. Unjustified refusal to restore or delay in restoring seized, sequestered and frozen bank deposits, placements, trust accounts, assets and records(*Sec. 42, RA 9372*);



13. Loss, misuse, diversion or dissipation of seized, sequestered and frozen bank deposits(*Sec. 43, RA 9372*);
14. Infidelity in the custody of detained persons(*Sec. 44, RA 9372*);
15. Unauthorized revelation of classified materials(*Sec. 46, RA 9372*); and
16. Furnishing false evidence, forged document, or spurious evidence(*Sec. 47, RA 9372*).

PERSONS LIABLE

As Principal – Any person who commits any of the acts under Sec. 3 and 4.

As Accomplice – any person who not being a principal under Art. 17 of the RPC or a conspirator as defined under Sec. 4 hereof, cooperates in the execution of either the crime of terrorism or conspiracy to commit terrorism by previous or simultaneous acts(*Sec. 5, RA 9372*).

As Accessory

GR: Any person who having knowledge of the commission of the crime of terrorism or conspiracy to commit terrorism and without having participated therein either as principal or accomplice under Art. 17 and 18 of the RPC, takes part subsequent to its commission in any of the following manner:

- a. By profiting himself or assisting the offender to profit by the effects of the crime;
- b. By concealing or destroying the body of the crime or the effects or instruments thereof in order to prevent its discovery;
- c. By harboring, concealing, or assisting in the escape of the principal or conspirator of the crime(*Sec. 6, Par. 1, RA 9372*).

XPN: Spouses, ascendants, descendants, legitimate, natural and adopted brothers and sisters or relatives by affinity within the same degree.

XPN to the XPN: Those falling under (a)(*Sec. 6, Par. 2, RA 9372*).

Surveillance of Suspects and Interception and Recording of Communications.

GR: The provisions of Republic Act No. 4200 (Anti-Wire Tapping Law) to the contrary notwithstanding, a police or law enforcement official and the members of his team may, upon a written order of the Court of Appeals, listen to, intercept and record, with the use of any mode,

form, kind or type of electronic or other surveillance equipment or intercepting and tracking devices, or with the use of any other suitable ways and means for that purpose, any communication, message, conversation, discussion, or spoken or written words between members of a judicially declared and outlawed terrorist organization, association, or group of persons or of any person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism.

XPN: Surveillance, interception and recording of communications between lawyers and clients, doctors and patients, journalists and their sources and confidential business correspondence shall not be authorized(*Sec. 7, RA 9372*).

ANTI-ALIAS LAW CA 142, AS AMENDED

GR: No person shall use any name different from the one with which he was registered at birth in the office of the local civil registry, or with which he was baptized for the first time, or, in case of an alien, with which he was registered in the bureau of immigration upon entry; or such substitute name as may have been authorized by a competent court.

NOTE: The name shall comprise the patronymic name and one or two surnames.

XPN: A pseudonym solely for literary, cinema, television, radio or other entertainment purposes and in athletic events where the use of pseudonym is a normally accepted practice(*Sec. 1, CA 142 as amended by RA 6085*).

PROCESS

1. Any person desiring to use an alias shall apply for authority therefor in proceedings like those legally provided to obtain judicial authority for a change of name.
2. The petition for an alias shall set forth the person's baptismal and family name and the name recorded in the civil registry, if different, his immigrant's name, if an alien, and his pseudonym, if he has such names other than his original or real name, specifying the reason or reasons for the use of the desired alias.

3. The judicial authority for the use of alias the Christian name and the alien immigrant's name shall be recorded in the proper local civil registry (Sec. 2, CA 142 as amended by RA 6085).

PROHIBITIONS

1. No person shall be allowed to secure such judicial authority for more than one alias (Sec. 2, CA 142 as amended by RA 6085).
2. No person shall use any name or names other than his original or real name unless the same is or are duly recorded in the proper local civil registry (Sec. 2, CA 142 as amended by RA 6085).
3. No person having been baptized with a name different from that with which he was registered at birth in the local civil registry, or in case of an alien, registered in the bureau of immigration upon entry, or any person who obtained judicial authority to use an alias, or who uses a pseudonym:
 - a. shall represent himself in any public or private transaction; or
 - b. shall sign or execute any public or private document without stating or affixing his real or original name and all names or aliases or pseudonym he is or may have been authorized to use (Sec. 3, CA 142 as amended by RA 6085).
4. All persons who have used any name and/or names and alias or aliases different from those authorized in Sec. 1 and duly recorded in the local civil registry, shall be prohibited to use such other name or names and/or alias or aliases (Sec. 4, CA 142 as amended by RA 6085).

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